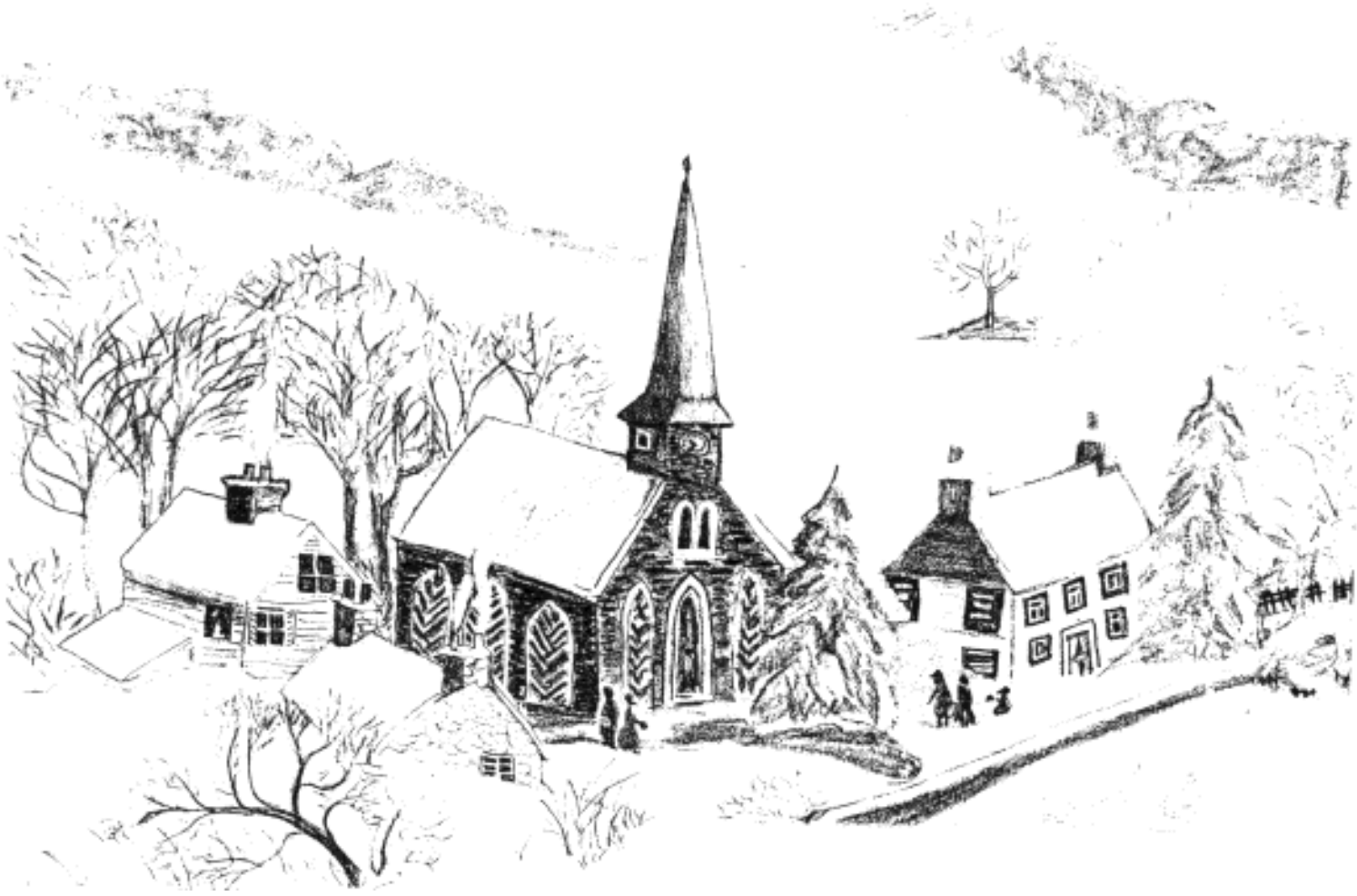
TEXAS REGISTER

Volume 22 Number 81 December 19, 1997 *Pages 12343-12627*



This month's front cover artwork:

Artist: *Franke Rischmueller*

12th Grade

Valley View High School, Valley View ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

Texas Register, **ISSN 0362-4781,** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $95, six month $75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at $7 per copy in printed or electronic format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us

Secretary of State - Alberto R. Gonzales

Director - Dan Procter
Assistant Director - Dee Wright

Receptionist - Tricia Duron

Texas Administrative Code
Dana Blanton
John Cartwright

Texas Register
Carla Carter
Ann Franklin
Daneane Jarzombek
Roberta Knight
Kelly Ramsey
Becca Williams

Circulation/Marketing
Jill S. Ledbetter
Liz Stern

GOVERNOR

Office of the Governor

Appointments Made September 2, 1997 12353
Appointments Made October 22, 1997 12353
Appointments Made October 24, 1997 12353
Appointments Made October 27, 1997 12353
Appointments Made November 3, 1997 12354
Appointments Made November 4, 1997 12354
Appointments Made November 10, 1997 12354
Appointments Made November 12, 1997 12354
Appointments Made November 13, 1997 12354
Appointments Made November 20, 1997 12355
Appointments Made December 2, 1997 12355
Appointments Made December 3, 1997 12355

ATTORNEY GENERAL

Letter Opinions 12357
Request for Opinions 12358

TEXAS ETHICS COMMISSION

Advisory Opinion Requests 12359
Opinions 12359

PROPOSED RULES

General Services Commission

Executive Administration Division

1 TAC §111.25 12361

Building and Property Services Division

1 TAC §115.50 12362

Texas Health and Human Services Commission

Medicaid Reimbursement Rates

1 TAC §§355.454, 355.456–355.458 12363
1 TAC §355.722, §355.723 12366
1 TAC §§355.771–355.773 12369

Railroad Commission of Texas

Liquefied Petroleum Gas Division

16 TAC §9.2, §9.15 12372
16 TAC §9.651 12376
16 TAC §9.1351 12376
16 TAC §9.1751, §9.1752 12376

Texas Real Estate Commission

Practice and Procedure

22 TAC §§533.7, 533.15, 533.16, 533.18, 533.21, 533.22, 533.29, 533.30 12377

State Board of Examiners for Speech-Language Pathology and Audiology

Speech-Language Pathologists and Audiologists

22 TAC §741.2 12379
22 TAC §741.12 12379
22 TAC §741.32 12380
22 TAC §741.41 12380
22 TAC §§741.62, 741.64, 741.65 12381
22 TAC §§741.82, 741.84, 741.85 12382
22 TAC §741.91 12383
22 TAC §741.103 12383
22 TAC §741.193 12384

Center for Rural Health Initiatives

Executive Committee for the Center for Rural Health Initiatives

25 TAC §500.103, §500.107 12385
25 TAC §§500.201, 500.203, 500.205, 500.207, 500.209, 500.211, 500.213, 500.215, 500.217 12386
25 TAC §§500.301, 500.303, 500.305, 500.307, 500.309, 500.311, 500.313, 500.315, 500.317, 500.319, 500.321, 500.323, 500.325, 500.327 12388

Texas Department of Insurance

General Administration

28 TAC §1.414 12392
28 TAC §1.415 12393

Life, Health and Accident Insurance and Annuities

28 TAC §3.13001 12394

Corporate and Financial Regulation

28 TAC §7.1012 12397

Insurance Premium Finance

28 TAC §25.88 12398

Texas Natural Resource Conservation Commission

Exemptions From Permitting

30 TAC §106.4 12399

Control of Air Pollution from Volatile Organic Compounds

30 TAC §115.10 12403
30 TAC §§115.420–115.423, 115.426, 115.427, 115.429 12406

Control of Air Pollution by Permits for New Construction or Modification

30 TAC §116.12 12416
30 TAC §§116.150, 116.151 12417
General Permits for Waste Discharges
30 TAC §§205.1–205.6 12418
Control of Certain Activities by Rule
30 TAC §321.141 12423
Texas Parks and Wildlife Department
Executive
31 TAC §51.164 12424
Law Enforcement
31 TAC §§55.701, 55.703, 55.705, 55.707 12425
Fisheries
31 TAC §57.112, §57.113 12426
Wildlife
31 TAC §§65.262–65.265, 65.267–65.269, 65.271, 65.276 12427
31 TAC §§65.262–65.265, 65.267, 65.269, 65.271, 65.276, 65.277 12428
31 TAC §§65.601–65.603, 65.605, 65.607–65.611 12429
31 TAC §65.604, §65.606 12432
Texas Department of Public Safety
37 TAC §1.4 12433
Traffic Law Enforcement
37 TAC §3.59, §3.62 12434
Texas Youth Commission
Youth Discipline
37 TAC §95.9 12439
Texas Board of Pardons and Paroles
Executive Clemency
37 TAC §143.2 12440
37 TAC §143.57 12441
Texas Department of Human Services
Medicaid Eligibility
40 TAC §15.100 12441
40 TAC §§15.415, 15.417, 15.430, 15.435 12442
40 TAC §§15.430–15.434 12449
40 TAC §15.455 12449
Texas Commission for the Deaf and Hard of Hearing
General Rules of Practice and Procedures
40 TAC §181.28 12450
Specialized Telecommunications Devices Assistance Program
40 TAC §182.3 12450
Texas Department of Protective and Regulatory Services
Child Preventive Services
40 TAC §700.110, §700.112 12452
40 TAC §700.523 12452
40 TAC §700.701, §700.705 12453
40 TAC §§700.702–700.704 12454
Twenty-Four Hour Care Licensing
40 TAC §720.26, §720.65 12457
40 TAC §720.64 12459
40 TAC §720.29, §720.31 12460
40 TAC §720.120 12460
40 TAC §720.243 12461
40 TAC §720.305, §720.326 12461
40 TAC §720.425, §720.426 12462
40 TAC §720.916 12462
40 TAC §720.52 12463
40 TAC §720.137 12464
40 TAC §720.207 12464
40 TAC §§720.363, 720.367, 720.370, 720.374 12464
40 TAC §§720.511, 720.533, 720.534 12466
General Licensing Procedures
40 TAC §§725.1501-725.1508, 725.1515-725.1520 12467
40 TAC §§725.1527-725.1533 12470
General Licensing Procedures
40 TAC §725.1801 12472
40 TAC §725.2027 12473
40 TAC §725.4051 12473
40 TAC §§725.6070–725.6072 12474
Texas Workforce Commission
Child Care and Development
40 TAC §809.79 12475
40 TAC §809.89 12476
40 TAC §§809.171–809.174 12478

WITHDRAWN RULES

Texas Department of Insurance
General Administration
28 TAC §1.414 12481

28 TAC §1.415 12481
Life,Health and Accident Insurance and Annuities
28 TAC §3.13001 12481
Corporate and Financial Regulation
28 TAC §7.1012 12481
Insurance Premium Finance
28 TAC §25.88 12481
Commission on Jail Standards
Supervision of Inmates
37 TAC §275.1 12482
37 TAC §275.7 12482

ADOPTED RULES

General Services Commission
Central Purchasing Division
1 TAC §113.11 12483
Texas Health and Human Services Commission
Medicaid Reimbursement Rates
1 TAC §355.102-355.105, §355.111 12485
Railroad Commission of Texas
Liquified Petroleum Gas Division
16 TAC §§9.5, 9.6 12485
Alternative Fuels Research and Education Division
16 TAC §§15.305, 15.310, 15.320 12486
16 TAC §15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, 15.450 12486
Texas Alocholic Beverage Commission
Licensing
16 TAC §33.7 12487
Legal
16 TAC §37.46 12488
16 TAC §37.61 12488
Texas State Board of Medical Examiners
General Provisions
22 TAC §161.1 12489
Licensure
22 TAC §163.16, §163.17 12489
Medical Records
22 TAC §165.1, §165.2 12490
22 TAC §§165.1-165.3 12490
Physician Registration
22 TAC §166.2 12490
Telemedicine
22 TAC §174.16 12491
Schedule of Fees and Penalties
22 TAC §175.1 12491
Investigation Files
22 TAC §179.4 12491
Physician Assistants
22 TAC §§185.2, 185.4, 185.6, 185.19 - 185.23, 185.25 12492
22 TAC §185.21 12492
Standing Delegation Orders
22 TAC §§193.1 - 193.5, 193.8, 193.9 12492
22 TAC §§193.1-193.7 12493
22 TAC §193.7 12493
Non-Certified Radiologic Technicians
22 TAC §§194.1-194.11 12493
Texas Health Care Information Council
Health Care Information
25 TAC §§1301.11, 1301.12, 1301.14-1301.19 12494
Texas Department of Insurance
Life, Accident, and Health Insurance and Annuities
28 TAC §§3.3001, 3.3002, 3.3018–3.3020, 3.3038, 3.3039, 3.3050, 3.3052, 3.3054, 3.3057, 3.3061, 3.3070–3.3074, 3.3079, 3.3081, 3.3092, 3.3110 12503
28 TAC §3.3078 12512
Trade Practices
28 TAC §§21.1101–21.1110 12513
Texas Natural Resources and Conservation Commission
General Rules
30 TAC §101.29 12524
Control of Air Pollution from Volatile Organic Compounds
30 TAC §115.950 12532
Control of Air Pollution from Nitrogen Compounds
30 TAC §117.540, §117.570 12533
Municipal Solid Waste
30 TAC §§330.1181, 330.1183 12534
Texas Parks and Wildlife Department
Law Enforcement
31 TAC §55.113 12535
31 TAC §§55.201–55.211 12535

Fisheries
31 TAC §§57.111, 57.113, 57.114, 57.134–57.136 12535
31 TAC §57.134, §57.136 12538
Texas County and District Retirement System
Calculation or Types of Benefits
34 TAC §103.5 12538
Creditable Service
34 TAC §105.4 12539
Miscellaneous Rules
34 TAC §107.4 12539
Texas Department of Public Safety
Equipment and Vehicle Standards
37 TAC §21.2 12539
Texas Board of Pardons and Paroles
General Provisions
37 TAC §141.111 12540
Parole
37 TAC §§145.41-145.47, 145.49-145.53, 145.57 12540
Revocation of Parole or Mandatory Supervision
37 TAC §§146.3–146.10 12541
Mandatory Supervision
37 TAC §149.1 12543
Texas Department of Human Services
Community Care for Aged and Disabled
40 TAC §48.2903, §48.2904 12544
40 TAC §§48.2903–48.2905, 48.2908 12544
Texas Department of Protective and Regulatory Services
Child Protective Services
40 TAC §700.101 12547
40 TAC §§700.315-700.318, 700.322, 700.330, 700.334 12547
40 TAC §§700.334-700.336 12549
40 TAC §700.513, §700.522 12549
40 TAC §700.1105 12551
40 TAC §§700.1310, 700.1314, 700.1315, 700.1332 12551
40 TAC §§700.1501, 700.1502, 700.1504-700.1506 12552
40 TAC §700.1718 12554
Twenty-Four Hour Care Licensing
40 TAC §§720.600-720.608 12554
General Licensing Procedures
40 TAC §725.1802 12555
40 TAC §725.2001, §725.2026 12556
40 TAC §§725.3079-725.3083 12556

EXEMPT FILINGS

Texas Department of Insurance
PROPOSED ACTION 12557
ADOPTION 12557

TABLES AND GRAPHICS

Tables and Graphics
Tables and Graphics 12559

OPEN MEETINGS

Texas State Board of Public Accountancy
Thursday, December 18, 1997, 9:00 a.m. 12579
Texas Department of Agriculture
Tuesday, December 16, 1997, 10:30 a.m. 12579
Texas Commission on Alcohol and Drug Abuse (TCADA)
Friday, December 12, 1997, 9:00 a.m. 12580
Friday, December 12, 1997, 11:00 a.m. 12580
Thursday, December 18, 1997, 11:00 a.m. 12580
Texas Animal Health Commission
Tuesday, December 16, 1997, 11:00 a.m. 12580
The State Bar of Texas
Friday, December 12, 1997, 8:30 a.m. 12580
Texas Boll Weevil Eradication Foundation
Thursday, December 18, 1997, 10:00 a.m. 12580
Texas Commission for the Deaf and Hard of Hearing
Friday, December 12, 1997, 9:00 a.m. 12581
Texas School for the Deaf
Friday, December 12, 1997, 8:30 a.m. 12581
Friday, December 12, 1997, 10:00 a.m. 12581
Friday, December 12, 1997, 1:00 p.m. 12581
Texas Department of Economic Development
Tuesday, January 6, 1998, 2:00 p.m. 12582
Advisory Commission on State Emergency Communications
Wednesday, December 17, 1997, 1:00 p.m., Rescheduled from December 12, 1997 12582
State Employee Charitable Campaign
Thursday-Friday, December 11–12, 1997, 10:00 a.m. and 10:30 a.m. respectively 12582
General Land Office

Wednesday, December 17, 1997, 9:00 a.m. 12583

Texas Department of Health

Tuesday, December 16, 1997, 9:00 a.m. 12583

Tuesday, December 16, 1997, 8:00 a.m. 12583

Friday, December 19, 1997, 9:30 a.m. 12583

Friday, December 19, 1997, 11:00 a.m. 12584

Texas Health Insurance Risk Pool ("Health Pool")

Monday, December 15, 1997, 11:00 a.m. 12584

Texas Higher Education Coordinating Board

Monday, December 15, 1997, 9:00 a.m. 12584

Monday, December 15, 1997, 9:45 a.m. 12584

Texas Department of Housing and Community Affairs

Tuesday, December 16, 1997, 9:30 a.m. 12585

Texas Department of Insurance

Wednesday, December 17, 1997, 9:00 a.m. 12585

Texas Department of Licensing and Regulation

Wednesday, December 17, 1997, 9:00 a.m. 12585

Wednesday, December 17, 1997, 1:00 p.m. 12585

Friday, December 19, 1997, 9:00 a.m. 12586

Monday, December 15, 1997, 9:00 a.m. 12586

Monday, December 15, 1997, 9:00 a.m. 12586

Texas Lottery Commission

Tuesday, December 16, 1997, 9:00 a.m. 12586

Texas Mental Health and Mental Retardation Board

Wednesday, December 17, 1997, 9:30 a.m. 12587

Wednesday, December 17, 1997, 10:30 a.m. 12587

Wednesday, December 17, 1997, 1:30 p.m. 12587

Wednesday, December 17, 1997, 2:30 p.m. 12587

Wednesday, December 18, 1997, 9:30 a.m. 12588

Texas Natural Resource Conservation Commission

Tuesday, December 16, 1997, 10:00 a.m. 12588

Wednesday, December 17, 1997, 9:30 a.m. and 1:00 p.m. 12588

Wednesday, December 17, 1997, 9:30 a.m. and 1:00 p.m. 12588

Tuesday, January 6, 1998, 10:00 a.m. 12589

Tuesday, January 6, 1998, 10:00 a.m. 12589

Monday, January 12, 1997, 9:00 a.m. 12589

Tuesday, January 13, 1998, 7:00 p.m. 12589

Texas Board of Occupational Therapy Examiners

Friday, December 12, 1997, 9:30 a.m. 12589

Texas Board of Orthotics and Prosthetics

Tuesday, December 16, 1997, 10:00 a.m. 12590

Tuesday, December 16, 1997, 1:30 p.m. 12590

Texas Department of Protective and Regulatory Services

Friday, December 19, 1997, 10:00 a.m. 12590

Texas Department of Public Safety

Monday, December 15, 1997, 3:00 p.m. 12590

Thursday, January 8, 1998, 3:00 p.m. 12591

Texas Public Finance Authority

Wednesday, December 17, 1997, 10:30 a.m. 12591

Public Utility Commission of Texas

Wednesday, December 17, 1997, 9:30 a.m. 12591

Railroad Commission of Texas

Friday, December 12, 1997, 9:00 a.m. 12592

Friday, December 12, 1997, 2:00 p.m. 12592

Tuesday, December 16, 1997, 9:30 a.m. 12592

Tuesday, December 16, 1997, 9:30 a.m. 12592

Friday, December 19, 1997, 9:00 a.m. 12592

Friday, December 19, 1997, 1:45 p.m. 12593

State Office of Risk Management

Wednesday, December 17, 1997, 9:15 a.m. 12593

Texas Senate

Thursday, January 8, 1998, 10:00 a.m. 12593

Special Board of Review

Wednesday, December 17, 1997, 1:00 p.m. 12593

Stephen F. Austin State University

Friday, December 12, 1997, 1:00 p.m. 12593

Friday, December 12, 1997, 1:00 p.m. 12594

Texas Southern University

Thursday, December 18, 1997, 1:30 p.m. 12594

Thursday, January 8, 1998, 10:00 a.m. 12594

Thursday, January 8, 1998, 11:15 a.m. 12594

Thursday, January 8, 1998, 12:30 p.m. 12594

Thursday, January 8, 1998, 1:15 p.m. 12594

Thursday, January 8, 1998, 11:15 a.m. 12594

Friday, January 9, 1998, 8:30 a.m. 12595

Texas State Technical College System

Friday, December 12, 1997, 10:00 a.m. 12595

Friday, December 12, 1997, 10:02 a.m. 12595

Texas Tech University

Thursday, December 11, 1997, 2:00 p.m. 12595

Texas Department of Transportation

Monday, December 15, 1997, 8:00 a.m. 12595

Thursday, December 18, 1997, 9:00 a.m. 12595

Tuesday, December 30, 1997, 8:00 a.m. 12596

Texas Underground Facility Notification Corporation

Wednesday, December 17, 1997, 2:00 p.m. 12596

University of Houston System

Monday, December 15, 1997, 8:00 a.m. 12596

University Interscholastic League

Monday, December 8, 1997, 9:00 a.m. 12596

Thursday, December 11, 1997, 9:00 a.m. 12597

University of Texas Health Science Center at San Antonio

Wednesday, December 17, 1997, 3:00 p.m. 12597

The University of Texas at Austin

Tuesday, December 9, 1997, 11:00 a.m. 12597

The University of Texas System

Wednesday, December 10, 1997, 9:00 a.m. 12597

Texas Workers' Compensation Insurance Fund

Tuesday, December 16, 1997, 7:00 p.m. 12597

Tuesday, December 16, 1997, 8:00 p.m. 12598

Wednesday, December 17, 1997, 1:00 p.m. 12598

Texas Council on Workforce and Economic Competitiveness

Thursday, December 11, 1997, 8:30 a.m. 12598

Texas Workforce Commission

Tuesday, December 16, 1997, 9:00 a.m. 12598

Regional Meetings

IN ADDITION

Texas Commission on Alcohol and Drug Abuse

Correction of Error 12605

Statewide Service Delivery Plan 12605

Ark-Tex Council of Governments

Request for Proposal for Provision of Child Care Training 12605

Office of the Attorney General

Notice of Request for Information 12605

Comptroller of Public Accounts

Legal Banking Holidays 12606

Notice of Request for Proposals 12606

Request for Proposals for the Hamilton ISD 12607

Texas Education Agency

Request for Application 12607

General Services Commission

General Services Commission State Energy Conservation Office Notice of Contract Award 12608

Notice of Contract Extensions 12608

Notice of Revisions to the Energy Conservation Design Standard for New State Buildings 12609

Request for Qualifications for Selection of Professional Surveying Firm 12609

Texas Department of Health

Licensing Action for Radioactive Materials 12609

Notice of Request for Proposal for Evaluation of LoneSTAR Selective Contracting Programs 12612

Notice of Revocation of Certificates of Registration 12613

Notice of Revocation of A Radioactive Material License 12613

Texas Department of Housing and Community Affairs Manufactured Housing Division

Notice of Administrative Hearing 12613

Texas Department of Insurance

Insurer Services 12614

Notice 12614

Notice 12614

Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers 12614

Notice of Public Hearing 12614

Third Party Administrator Applications 12615

Third Party Administrators Applications 12615

Commission on Jail Standards

Grant Amendment 12615

Texas Natural Resource Conservation Commission

Notice of Applications for Waste Disposal/Discharge Permits . 12615

Notice of Application 12616

Notice of Public Hearing 12617

Provisionally-Issued Temporary Permits 12618

Public Hearing Notice 12618

Notice of Application for Amendment to Service Provider Certificate of Operating Authority 12619

Notice of Application 12619

Notice of Application for Approval of Certain Depreciation Rates 12619

Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority 12619

Notice of Application....12620

Notice of Application for Service Provider Certificate of Operating Authority....12620

Notice of Application To Amend Certificate of Convenience And Necessity....12620

Notice of Application....12620

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27....12621

Public Notice....12621

Public Notice of Interconnection Agreement....12621

Public Notice of Interconnection Agreements....12623

Railroad Commission of Texas

Announcement....12623

The Texas A&M University System

Consultant Contract Award Notification....12623

Texas Department of Transportation

Notice of Invitation....12623

Rate Schedule....12625

Texas Workers Compensation Commission

Corrections of Error....12626

Invitation To Applicants For Appointment To The Medical Advisory Committee....12627

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Office of the Governor

Appointments Made September 2, 1997

To be member of the **North Texas Tollway Board of Directors,** pursuant to Senate Bill Number 370, 75th Legislature, Regular Session; Jere W. Thompson, Jr. 6043 Aberdeen Avenue, Dallas, Texas 75230; For a term to expire September 1, 1998.

To be members of the **North Texas Tollway Board of Directors,** pursuant to Senate Bill Number 370, 75th Legislature, Regular Session; Donald D. Dillard, 6914 Windy Ridge, Dallas, Texas; A. David Jimenez, 10317 County Road, #1016, Burleson, Texas 75028; for terms to expire September 1, 1999.

To be appointed as **Criminal District Attorney of Comal County** until the next General Election and until his successor shall be duly elected and qualified: The Honorable Dib Waldrip, 262 Pennsylvania Boulevard, New Braunfels, Texas 78130. Mr. Waldrip is being appointed pursuant to House bill Number 1965, 75th Legislature, Regular Session.

To be appointed as **Criminal District Attorney of Newton County** until the next General Election and until his successor shall be duly elected and qualified: Ed Tracy, P.O. Box ET, Newton, Texas 75966. Mr. Tracy is being appointed pursuant to House Bill Number 844, 75th Legislature, Regular Session.

Appointments Made October 22, 1997

To be appointed as **Justice of the Supreme Court of Texas** until the next General Election and until her successor shall be duly elected and qualified: The Honorable Deborah G. Hankinson, 3440 Purdue, Dallas, Texas 75225. Justice Hankinson will be replacing Justice John Cornyn of Austin who resigned.

To be appointed to the **Teacher Retirement System of Texas Board of Trustees** for a term to expire August 31, 2003: Brenda L. Jackson, 5539 McCommas Boulevard, Dallas, Texas 75206. Ms. Jackson will be replacing Frank W. Camp of Brownfield whose term expired.

To be appointed member of the **Texas Animal Health Commission** for a term to expire September 6, 2003: Richard C. Traylor, HC 01, Box 39, Carrizo Springs, Texas 78834–9602. Mr. Traylor will be replacing David Winters of Del Rio whose term expired.

To be designated as presiding officer of the **Texas Commission on Fire Protection** David Abernathy, Pittsburg, Texas, for a term at the pleasure of the Governor pursuant to Senate Bill Number 371, 75th Legislature, Regular Session.

To be appointed as members of the **Texas Commission on Fire Protection** Gilbert D. Jalomo, Jr., 1038 Lindsay Drive, Rosenberg, Texas 77471; Captain Alonzo Lopez, Jr., 725 south 18th Street, Kingsville, Texas 78363; Carl Dewayne Wren, 3507 Cattlemens Drive, Manchaca, Texas 78363: for a terms to expire February 1, 1999:

To be appointed as members of the **Texas Commission on Fire Protection** David Abernathy, P.O. Box 992, Pittsburg, Texas 75686; Chief Juan J. Adame, 4517 Larkspur Lane, Corpus Christi, Texas 78416; Captain Marvin G. Dawson, 1006 East Reppto, Brownfield, Texas 79316; Robert H. Price, 1713 Chittam Drive, Euless, Texas 76039, for terms to expire February 1, 2001:

To be appointed as members of the **Texas Commission on Fire Protection** Pat Barrett, 44441 Old College, #2101, Bryan, Texas 77801; Gilbert Robinson, 2408 Second Avenue South, Texas City, Texas 77590; Kelley Martin Stalder, 7273 Moss Ridge, Parker, Texas 75002; Margaret "Peggy" Trahan, P.O. Box 2576, South Padre Island, Texas, for terms to expire February 1, 2003.

Appointments Made October 24, 1997

To be appointed as member of the **Texas Commission on Fire Protection** Chief Ricardo Saldana, City of Mission Fire Department, 500 East Tom Landry, Mission, Texas 78572; for a term to expire February 1, 1999.

To be designated as chairman of the **Statewide Health Coordinating Council** Dr. Ben Raimer of Galveston, for a term at the pleasure of the Governor pursuant to House Bill Number 1716, 75th Legislature, Regular Session..

To be appointed to the **Stateside Health Coordinating Council** David A. Valdez, M.D., 19208 Tierra Cove, San Antonio, for a term to expire August 1, 2001 pursuant to House Bill Number 1716, 75th Legislature, Regular Session.

To be appointed as members of the **Texas Youth Commission** Charles R. Henry, 126 Walnut Drive, Pampa, Texas 79065, (replacing Pete Harrell of Austin whose term expired); Leonard E. Lawrence, M.D., 3251 Swandale Drive, San Antonio, Texas 78239, (reappointment); for terms to expire August 31, 2003:

To be member of the **Texas State Commission on Volunteerism And Community Service** for a term at the pleasure of the Governor: Donna Reynolds, Executive Director, Governor's Commission for Women, P.O. Box 12428, Austin, Texas. Ms. Reynolds will be serving as an ex officio member and will be replacing Geanie Morrison who resigned.

Appointments Made October 27, 1997

To be appointed as members of the **Texas State Board of Examiners of Marriage and Family Therapists** for terms to expire February 1, 2003: Marvarene Oliver, Ed.D, 401 Southern, Corpus Christi, Texas 78404 (replacing Dr. Thomas Milholland of Abilene whose term expired); Carl S. Strain, 36 West Beauregard, #712, San Angelo,

Texas 76903 (replacing Leslie Goolishian of Galveston whose term expired); Gail Griffin Thomason, 2810 Jacaranda, Harlingen, Texas 78550, (replacing Dr. David A. Talbot of Commerce whose term expired).

To be members of the **Texas Structural Pest Control Board** for a term to expire February 1, 1999: Madeline K. Gamble, Dallas, Texas 75233, (will be filling the unexpired term of Kathleen St. John of Dallas who resigned): Les Hoyt, 6416 Moorgate Amarillo, Texas 79109 (reappointment); Jay D. Stone, Ph.D., 6803 Saratoga Avenue, Lubbock, Texas 79424 (replacing Pat Graves of Abilene whose term expired); for terms to expire February 1, 2003.

To be appointed members of the **Texas State Board of Pharmacy** for terms to expire August 31, 2003: Kim A. Caldwell, 4033 Bramley Way, Plano, Texas 75093, (replacing Marina Sifuentes of Austin whose term expired); Wiki Erickson, 1200 Knotty Oaks Drive, Waco, Texas 76712–2320 (replacing Jeanette Coffield of Jasper whose term expires); Donna Burkett Rogers, 2 Enchanted Wood, San Antonio, Texas 78248, (replacing Charlie Bethea of Houston whose term expired).

To be appointed as members of the **Texas Historical Records Advisory Board** pursuant to House Bill 1811, 75th Legislature, Regular Session: for a term to expire February 1, 1999: Martha Doty Freeman, 204 Skyline Drive, Austin, Texas 78746; Eloise L. Burges, P.O. Box 1122, Mason, Texas 76856, for a term to expire February 1, 2000.

To be appointed members of the **Texas Commission on the Arts** for terms to expire August 31, 2003: Sue Schrier Bancroft, 9121 David Fort Road, Argyle, Texas 76226, (replacing Robert Lende of San Antonio whose term expired); Tony L. Chauveaux, 1360 Audubon Place, Beaumont, Texas 77706 (replacing Dr. David Montejano of Austin whose term expired); C.A. "Tony" Sherman, 2339 Broadgreen, Missouri City, Texas 77489 (replacing Laurence D. Miller, III of Austin whose term expired); Kathleen Birkner Stevens, 2009 Deepdale Drive, Fort Worth, Texas 76107, (reappointment); Catherine Blaffer Taylor, 1203 County Club Drive, Midland, Texas 79701 (replacing Matilda Robinson of Dallas whose term expired).

To be appointed **Historical Records Coordinator** Chris LaPlante, State Archivist, for a term to expire February 1, 2001, pursuant to House Bill 1811, 75th Legislature, Regular Session. As Historical Records Coordinator, Mr. La Plante will serve as presiding officer of the Texas Historical Records Advisory Board.

Appointments Made November 3, 1997

To be appointed as **Justice of the Court of Appeals, Fifth Court of Appeals District** The Honorable John R. Roach, 3745 Morton Vale, Plano, Texas, 75074, until the next General Election and until his successor shall be duly elected and qualified. Judge Roach will be replacing Deborah Hankinson who was elevated to the position of Justice of the Supreme Court of Texas.

Appointments Made November 4, 1997

To be appointed members of the **Texas Peace Officers' Memorial Advisory Committee** for terms to expire February 1, 1999: Jennifer Dominguez; 13535 Chappel View, San Antonio, Texas 78249 (reappointment); Arthur Ray Tupin, Chief Deputy, Potter County Sheriff's Office, 608 South Pierce, Armarillo, Texas 79101, (replacing Richard L. Czech of Midland who resigned); The Honorable Tommy Brock Thomas, Sr., Sheriff of Harris County, 1301 Franklin, Houston, Texas 77002 (reappointment); Thomas R. Windham, Chief of Police, City of Fort Worth, 350 West Belknap Street, Fort Worth, Texas 76102 (reappointment).

To be members of the **Texas Military Facilities Commission** for terms to expire April 30, 2003, pursuant to Senate Bill 352, 75th Legislature, Regular Session: Constance Linbeck. P.O. Box 77227, (replacing Colonel Jerry W. Ragsdale of Dallas whose term expired); Gary McClure, P.O. Box 3405, San Angelo, Texas 76902, (replacing Hal Boyd of Big Spring whose term expired).

To be members of the **Board of Pardons and Paroles Policy Board** for terms to expire February 1, 1999, pursuant to Senate Bill 1386, 75th Legislature, Regular Session: Paul Joseph Prejean, 1212 Velasco, #201, Angleton, Texas 77515; W. G. Walker, 207 East Reagan Street, Palestine, Texas 75801: For terms to expire February 1, 2001, Gerald L. Garrett, 3404 South State Highway 366, Gatesville, Texas 76528; Victor Rodriguez, 420 South Main. Sam Antonio, Texas 78204: For terms to expire February 1, 2003: Rissie Owens, P.O. Box 599, Huntsville, Texas 77342; Alvin A. Shaw, 429 South Main, San Antonio, Texas 78204.

To be a member of the **Executive Committee of the Center for Rural Health Initiatives** for a term to expire August 31, 2003; Conny M. Moore, 111 Lakeview Drive, Borger, Texas 79007–8261. Mr. Moore will be replacing Jerry Nobles of Kirbyville whose term expired.

Appointments Made November 10, 1997

To be a member of the **State Board of Education, District 8 Position,** until the next General Election and until her successor shall be duly elected and qualified: Grace Rose Shore, 1892 Chestnut, Longview, Texas 75604. Mrs. Shore will be replacing Donna Ballard of The Woodlands who resigned.

To be members of the **Texas Science and Technology Council** for two year terms and at the pleasure of the Governor: Ronald James Robinson, Ph.D., President-Texaco Technology Division, Texaco, Inc., 1111 Bagby, Houston, Texas 77002, (replacing Brendan B. Godfrey of Brooks AFB who resigned); Charles J. Roesslein, President and Chief Executive Officer, Southwestern Bell Technology Resources, 9505 Arboretum Boulevard, Austin, Texas 78759, (replaces Van H. Taylor of Austin who resigned).

Appointments Made November 12, 1997

To be designated as Chairman of the **Texas Military Facilities Commission**for a term at the pleasure of the Governor, pursuant to Senate Bill Number 352, 75th Legislature, Regular Session.

To be appointed to the **Texas Health Care Information Council** for terms to expire September 1, 2003: Bobby S. De Rossett 23033 Lakeside Drive, Flint, Texas 75762 (reappointment); Woody F. Gilliland, #8 Glen Abbey, Abilene, Texas (replacing Mary Pickett of San Antonio whose term expired); Robert W. Gracy, Ph.D., 3417 Bellaire Park Court, Fort Worth, Texas 76109, (replacing Cindy Basham of Plan who resigned).

To be appointed to the **Continuing Advisory Committee for Special Education** for terms to expire February 1, 1999: pursuant to Public Law 105–17 ,Individuals with Disabilities Education Act, Amendments of 1997: Colleen L. Horton, 4004 Shadow Oak Lane, Austin, Texas 78746; Lee Alyce McGrew, 431 East Day Street, Denison, Texas 75021; Dan M. Leonard, 3321 Neely, #Q-3, Midland, Texas 79707; Geraldine Tincy" Miller, 3815 Beverly Drive, Dallas, Texas 75205.

Appointments Made November 13, 1997

To be a member of the **Texas Growth Fund** for a term to expire February 1, 1999; J. Michael Bell, Sr, 280 Bell-Ottmers Road,

Fredericksburg, Texas 78624 (filling the unexpired term of Daphne Ann Brown of Houston who resigned).

To be a member of the **Texas Growth Fund** for a term to expire February 1, 2003: Catherine S. Woodruff, 1206 Archley Drive, Houston, Texas 77055, (will be filling the unexpired term of Suzanne Kriscunas of Dallas who resigned).

Appointments Made November 20, 1997

To be members of the **Texas Underground Facility Notification Corporation** pursuant to House Bill Number 2295, 75th Legislature, Regular Session: for terms to expire August 31, 1998: Tony Boyd, 732 Heather Knoll, Desoto, Texas 75115; David Hooper, 630 Colonila Drive, Portland, Texas 78374; Carmen D. Nadolney, 314 White Cedar Drive, Houston, Texas 77015–2325; Donna K. Peterson, P.O. Box 158, Orange Texas 77631.

To be members of the **Texas Underground Facility Notification Corporation** pursuant to House Bill Number 2295, 75th Legislature, Regular Session: for terms to expire August 31, 1999: E. Leon Carter, 7920 Case Drive, Plano, Texas 75025; Pamela J. Hacker, 2905 Stratford Drive, Temple, Texas 76502; Steven F. Landon, 204 Briarcliff, Bedford, Texas 76021; Nancy Lou Sullivan, P.O. Box 537, Colorado City, Texas 79512.

To be members of the **Texas Underground Facility Notification Corporation** pursuant to House Bill Number 2295, 75th Legislature, Regular Session: for terms to expire August 31, 2000: Ralph Edward Alonzo, 5903 Heather Vies, San Antonio, Texas 78249; Lois W. Kolkhorst, 2511 Mustang Road, Brenham, Texas 78504; Howard T. Pebley, Jr., Route 2, Box 1582D, McAllen, Texas 78504; E. Ashley Smith, 3708 Chevy Chase, Houston, Texas 77019.

To be a member of the **Texas Advisory Board of Occupational Therapy** for a term to expire February 1, 2001: Gail Blom, 18040 Midway Road, #179, Dallas, Texas, (filling the unexpired term of Gwen Parker of Odessa who resigned).

To be members of the **Texas Advisory Board of Occupational Therapy** for terms to expire February 1, 2003: Lonnie E. Cole, 8042 Wayward Trail, San Antonio, Texas 78244–1833 (replacing Benny McGehee of El Paso whose term expired); Linda Diane Veale, 2732 80th Street, Lubbock, Texas 79423, (replacing Esperanza Brattin of McAllen whose term expired).

To be appointed as **Judge of the 281st Judicial District Court, Harris, County,** until the next General Election and until her successor shall be duly elected and qualified: Jane Nenninger Bland, 6437 Edloe, Houston, Texas. Judge Bland will be replacing Judge William F. Bell of Houston who resigned).

To be chair of the **Texas State Board of Examiners of Marriage and Family Therapists** for a term at the pleasure of the Governor: George P. Pulliam, Dickinson, Texas.

Appointments Made December 2, 1997

To be appointed as **Secretary of State** during the term of office of this Governor: Alberto R. Gonzales, 6505 Torrey Pines Cove, Austin, Texas 78746. Mr. Gonzales will be replacing Antonio O. Garza, Jr. of Austin who resigned.

Appointments Made December 3, 1997

To be appointed as **Judge of the 57th Judicial District Court, Bexar County,** until the next General Election and until his successor shall be duly elected and qualified: Patrick J. Boone, 19320 Autumn Garden, San Antonio, Texas. Mr. Boone will be replacing Judge Charles A. Gonzales of San Antonio who resigned.

To be appointed as **Judge of the 199th Judicial District Court, Collin County,** until the next General Election and until his successor shall be duly elected and qualified: Robert T. Dry, Jr., 3832 Appomattox Circle, Plano, Texas 75023. Mr. Dry will be replacing John R. Roach of Plan who was appointed to the Fifth Court of Appeals.

To be appointed members of the **Texas Planning Council for Developmental Disabilities** for terms to expire February 1, 2003: Amy L. Baxter Ley, 404 Bluegrass Lane, Euless, Texas 76039, (replacing Shenikwa Cox of Dallas whose term expired); Joe Colunga III, 5 Cifuentes, Brownsville, Texas 78521 (reappointment); Karen Beth Holt, 406 Caddo, Marshall, Texas 75670, (reappointment); Vickie J. Mitchell, 13 Brandon Road, Conroe, Texas 77302 (replacing Barbara Loera of Austin whose term expired); L. Davis Ramos, 714 Caddo, Corpus Christi, Texas 78412, (replacing Hector Saenz of San Antonio whose term expired); Johhny Ray Sauseda, 416 Londonderry Street, Victoria, Texas 77901 (replacing Federico Marquez of El Paso whose term expired).

To be designated as **Chair of the Governor's Commission for Women** Dr. Sylvia P. Hernandez of San Antonio, for a term to expire at the pleasure of the Governor, pursuant to Executive Order 95019A,

To be appointed as **Vice Chair of the Governor's Commission for Women**Jan D. O'Neill of Midland, for a term at the pleasure of the Governor, pursuant to Executive Order 95–10A.

Issued in Austin, Texas on December 16, 1997.

9716773
George W. Bush
Governor of Texas

ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinions

LO-97-102 (ID#39621). Request from the Honorable Tim Curry, Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap Fort Worth, Texas 76196-0201, concerning whether a county bail-bond board may require an applicant or a renewing licensee to provide either title insurance or a title opinion if the applicant or licensee uses real property to secure the payment of any bail-bond obligation the applicant or licensee may incur.

SUMMARY. A county bail-bond board may not require an individual applicant for a bondsman's license to procure either a title opinion or title insurance for any, real property the individual will convey in trust to the board to secure future bond forfeitures.

LO–97-103 (ID#39465). Request from the Honorable Jack Skeen, Jr., Smith County Criminal District Attorney, Smith County Courthouse, Tyler, Texas 75702, concerning Authority of personal bond office to report findings to magistrate.

SUMMARY. A personal bond office created pursuant to Code of Criminal Procedure article 17.42 may report its findings on a defendant to the court before which the defendant's case is pending. For purposes of article 17.42, a case is pending before the court in which the complaint was filed or to which the case is transferred for further proceedings.

LO–97-104 (RQ958). Request from the Honorable Cindy Maria Garner, District Attorney, 349th Judicial District, P.O. Box 1076, Crockett, Texas 75835, concerning whether a person who creates and distributes a do-it-yourself kit for inmates' use in proceedings before the Board of Pardons and Parole is engaged in the unauthorized practice of law.

SUMMARY. This office cannot determine whether a person who creates a do-it-yourself kit for inmates' use in parole proceedings practices law in violation of Government Code section 81.101. First, whether a service requires use of legal skill or knowledge for purposes of section 81.101, subsection (a) will depend upon the facts. In addition, subsection (b) of section 81.101 recognizes the authority of the judicial branch to determine what constitutes the practice of law on a case-by-case basis, unconfined by statute. Thus, even if this office had full knowledge of all the relevant facts and could determine whether certain conduct falls within subsection (a), this office could not definitively resolve whether the conduct constitutes the practice of law.

LO-97-105 (ID#39583). Request from Mr. Mark Littleton, Executive Director, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701, concerning whether the State Board for Educator Certification is required to use the State Office of Administrative Hearings to conduct all administrative hearings in contested cases before the agency under chapter 2001, Government Code.

SUMMARY. The State Board of Educator Certification has the choice of either employing in-house hearings officers whose sole duty is to hear contested cases to conduct such proceedings, or using the hearings officers provided by the State Office of Administrative Hearings.

LO-97-105 (ID#39583). Request from Mr. Mark Littleton, Executive Director, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701, concerning whether the State Board for Educator Certification is required to use the State Office of Administrative Hearings to conduct all administrative hearings in contested cases before the agency under chapter 2001, Government Code.

SUMMARY. The State Board of Educator Certification has the choice of either employing in-house hearings officers whose sole duty is to hear contested cases to conduct such proceedings, or using the hearings officers provided by the State Office of Administrative Hearings.

LO-97-106 (ID# 39611). Request from Mr. Robert Marquette, Acting Executive Director, Texas Workers' Compensation Commission, Southfield Building, MS-4D, 4000 South IH-35, Austin, Texas 78704, concerning Interpretation of Texas Labor Code section 412.008(b).

SUMMARY. Nothing in the language of section 412.008(b) of the Labor Code, concerning the formula for costs to be paid by a state agency to the State Risk Management Division of the Workers' Compensation Commission under an interagency contract for risk management services, restricts the liability exposure or cost of claims and losses used in that formula to those "which arise from incidents within the agency's control." The State Risk Management Division, in calculating such costs, is not estopped from assessing them in full because its agents or representatives may have waived some part of them in the past.

LO-97-107 (ID# 39457). The Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio Street, Box 1, Pearsall, Texas 78061-3100, concerning Disposition of state payment to county for transporting prisoners to Texas Department of Criminal Justice.

SUMMARY. The Frio County sheriff's department has received payment from the state for transporting prisoners to the Texas Department of Criminal Justice in excess of the mileage payment to the constable who actually performed the service. The excess payment from the state represents compensation and must be deposited in the county treasury pursuant to section 113.021 of the Local Government Code.

TRD-9716585

Request for Opinions

RQ-1032. Requested from The Honorable Rayford A. Ratliff, Moore County Attorney, 715 Dumas Avenue, Courthouse, Room #208, Dumas, Texas 79029, concerning whether §41.011, Government Code, which authorizes a county attorney to conduct a private law practice, is applicable to an assistant county attorney.

RQ-1033. Requested from The Honorable Pete P. Gallego, Chair, Committee on General Investigating, Texas House of Representative, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a Dallas city council member whose wife is employed by American Airlines may participate in matters involving the use of Love Field.

RQ-1034. Requested from Mr. Gilbert Kissling, Administrator, Texas State Board of Plumbing Examiners, P.O. Box 4200, Austin, Texas 78765, concerning adoption of plumbing codes by a municipality under §5B(b) of article 6243-101, V.T.C.S.

RQ-1035. Requested from The Honorable Buster Brown, Chair, Natural Resources Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning authority of a school district to regulate interviews conducted on school premises by the Department of Protective and Regulatory Services.

RQ-1036. Requested from Mr. Doyne Bailey, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127, concerning whether two companies may alternate control of a facility licensed to manufacture beer.

RQ-1037. Requested from The Honorable Michael J. Guarino, Galveston County Criminal District Attorney, 722 Moody, County Courthouse, Galveston, Texas 77550, concerning whether a member of a governmental body who participated in an executive session of a public meeting is entitled to copy the tape recording of that closed session.

TRD-9716524

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full texas of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-423. The Texas Ethics Commission has been asked whether a research group established by members of a legislative caucus is subject to the requirements of Election Code, §253.0341.

AOR-424. The Ethics Commission has been asked about the 1997 amendments to Election Code, §255.006. The specific question is about the placement of the word "for" in a political advertisement.

AOR-425. The Ethics Commission has been asked to consider questions about the use of state equipment for filing reports required under title 15 of the Election Code.

AOR-426. The Ethics Commission has been asked whether the disclosure information described in Election Code, §255.001 is required on a wooden nickel that bears a logo supporting a candidate.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716257
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: December 4, 1997

♦ ♦ ♦

Opinions

EAO-377. Questions about lobby registration in connection with events paid for by contributions from "councils" that support various units of a public university. (AOR-414)

Summary. A group that makes contributions for the use of university academic departments is not making expenditures that count toward lobby registration under Government Code, §305.003(a)(1) as long as the group does not earmark the contributions to be used for an expenditure or expenditures described in Government Code, §305.006(b). An entity that holds and disburses funds used for an expenditure or expenditures described in Government Code, §305.006(b) is not "making expenditures" for purposes of Government Code, §305.003(a)(1) as long as the group's only discretion in regard to disbursement of the funds is to ensure that the funds are used to support a university.

EAO-378. Whether a legislator may use political contributions to pay expenses incurred by the legislator's spouse in attending the opening ceremony of the legislative session, Legislative Ladies functions, or legislative conferences. (AOR-415)

Summary. A newly-elected or re-elected legislator may use political contributions to pay travel expenses for his or her spouse to attend the opening ceremony of the legislature. A legislator may not use political contributions to pay expenses associated with the attendance of the legislator's spouse at Legislative Ladies functions. A member of the legislature may not use political contributions to pay for his or her spouse to attend a legislative conference if the spouse is attending merely to participate in social activities provided for spouses. A member of the legislature may use political contributions to pay for his or her spouse to attend a legislative conference if the spouse attends the conference to participate in the substantive programs offered at the conference in order to assist the legislator in the performance of legislative duties or activities.

EAO-379. Questions relating to the transfer of funds from a labor organization to a political committee. (AOR-416)

Summary. A labor organization would be making a political contribution to a political committee if it honored a request from its members to transfer a portion of a member's required membership dues to the political committee. Any transfer of funds from labor organization property to a political committee may be used only for purposes permitted by Election Code, §253.100. Interest earned on money belonging to a labor organization can be used for political committee purposes only to the extent permitted by Election Code, §253.100.

EAO-380. Whether an envelope used to send political advertising must bear the disclosure information required by Election Code, §255.001. (AOR-418)

Summary. The disclosure information required by Election Code, §255.001 is not required on an envelope that is used to transmit political advertising provided that the political advertising in the envelope complies with the requirements of Election Code, §255.001.

EAO-381. The meaning of the term "executive head" for purposes of the financial disclosure requirements and other provisions of Government Code, chapter 572. (AOR-421)

Summary. The chief executive or administrative officer of a state agency is the individual in charge of the day-to-day operations of the agency. If the individual in charge of the day-to-day operations of an agency is an appointed officer and is therefore excluded from the statutory definition of "executive head of a state agency" in Government Code, §572.002(5), there is no "executive head" of that agency for purposes of Government Code, chapter 572.

EAO-382. Questions about the interpretation of Election Code, §253.1611, a provision added to the Judicial Campaign Fairness Law in the 1997 Legislative Session. (AOR-422)

Summary. A pledge to transfer money to a political committee for political purposes is a political contribution. The date of the contribution is the date the pledge is accepted. An officeholder who is also a candidate, as that term is defined in Election Code, §251.001(1), is subject to the restrictions in Election Code, §253.1611(d) applicable to candidates as well as those applicable to

officeholders. The amount of a political contribution is not reduced by the amount of any consideration received in exchange for the contribution.

Issued in Austin, Texas, on November 24, 1997.

TRD-9716258

Tom Harrison
Executive Director
Texas Ethics Commission
Filed: December 4, 1997

♦ ♦ ♦

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 111. Executive Administration Division

Memorandum of Understanding Between the Texas Department of Economic Development and the General Services Commission

1 TAC §111.25

The General Services Commission proposes new §111.25, a memorandum of understanding (MOU) between the General Services Commission (the "GSC") and the Texas Department of Economic Development (the "TDED") concerning cooperation in program planning, budgeting relating to procurement information, and certification and technical assistance to small and historically underutilized businesses. The new section allows for enactment of the Texas Government Code, §481.028 (Vernon 1998).

Rolando Fabrega, Director of Business Services, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Fabrega, also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of this MOU will be the enhancement of opportunities, education and knowledge of Historically Underutilized Business

There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposals may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

The new section is proposed under the Texas Government Code, §481.028, and the Texas Government Code, Title 10, Subtitle D, Chapter 2161, which authorizes the Commission to administer the HUB Program.

The following statutes are affected by this new section: the Texas Government Code, Title 10, Subtitle D, Chapter 2161, and Texas Government Code, §481.028.

§111.25. Memorandum of Understanding between the Texas Department of Economic Development and the General Services Commission.

(a) Pursuant to the Texas Government Code, §481.028 (Vernon 1998) the General Services Commission adopts the following memorandum of understanding (MOU) with the Texas Department of Economic Development, under which they agree to cooperate in program planning and budgeting relating to procurement information, and certification and technical assistance to small and historically underutilized businesses.

(b) The General Services Commission and the Texas Department of Economic Development mutually agree to the following in order to serve the citizens of Texas in an efficient and fiscally responsible way:

(1) to cooperate on regional economic planning with Texas;

(2) to cooperate in providing procurement information, certification and technical assistance to small and historically underutilized businesses;

(3) to share information of mutual interest;

(4) to develop the agreements necessary to accomplish the activities set forth in the MOU; and

(5) to cooperate to encourage economic development within Texas.

(c) The MOU becomes effective upon execution by representatives of each agency, and shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716326
Judy Ponder
General Counsel

General Services Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–3960

♦ ♦ ♦

Chapter 115. Building and Property Services Division

Space Allocation

1 TAC §115.50

The General Services Commission proposes an amendment to §115.50, concerning space allocation and the 153 square feet of usable office space rule. Amendments to §115.50, concerning space allocation, will correct reference to an old statutory cite for the State Purchasing and General Services Act in subsection (a) to its current location under the Texas Government Code, Title 10, Subtitle D; and will add new language in subsection (g) that exempts emergency leases, negotiated leases with political subdivisions and negotiated leases in the absence of competition from the 153 square feet of usable office space rule. This will allow the Commission to fulfill its obligation to allocate space to state agencies in the most efficient manner possible.

Norman Donelson, State Lease Officer, Facilities Construction and Space Management, has determined that for the first five-year period the amendments to §115.50 are in effect there will be no effect to state or local government as a result of enforcing or administering the amendments.

Norman Donelson also has determined for each year of the first five years the amendments to §115.50 are in effect the public benefit anticipated as a result of enforcing the rule is that the Commission will be able to allocate space to state agencies in an efficient manner thereby serving the best interests of the Texas taxpayers as well as state agencies. There is no anticipated economic cost to persons required to comply with the rule as proposed. There will be no effect on small businesses.

Comments on the proposals may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

This amendment is proposed under the Texas Government Code, Title 10, Subtitle D, Chapter 2165, §2165.108 which provides the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of that subchapter.

The following statute is affected by this rule: Government Code, Title 10, Subtitle D, Chapter 2165.

§115.50. Space Allocation.

(a) The Texas Government Code, Title 10, Subtitle D, §2165.104 [~~Texas Civil Statutes, Article 601b, §6.021~~] requires the commission to allocate space to state agencies in the best and most efficient manner possible and provides that the commission may not allocate space to an Executive and Administrative Department and Agency, and an Health, Welfare and Rehabilitation Agency [~~Article I or II agency~~] that exceeds an average of 153 square feet for each agency employee for each agency site for usable office space.

(b) By August 31, 1995, office space under the commission's jurisdiction shall be allocated to Executive and Administrative Departments and Agencies, and Health,Welfare and Rehabilitation Agencies [~~Article I or II agencies~~] at an average space allocation ratio of not more than 153 square feet of usable office space per agency employee for each agency site. For the purpose of calculating the space allocation ratio at a particular site, all offices, workstations, workspaces, storage spaces, support spaces, and circulation spaces within the agency's net usable square-footage shall be included except that type of space listed in subsection (d) of this section.

(c) Each state agency shall propose a plan acceptable to the commission for meeting the target allocation. Such plans shall be submitted by March 31, 1994.

(d) (No change.)

(e) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(3) (No change.

[~~(4) Article I or II agency–A state agency listed in Article I or II of the General Appropriations Act.~~]

(4) [~~(5)~~] Net usable square feet–An area within the exterior walls of a building identified as needed by the occupying agency to carry out its function, including interior hallways for the exclusive use of the occupying agency, but shall not include areas reserved for:

(A) public hallways, restrooms, stairwells, and elevator shafts;

(B) mechanical rooms or closets for heating, air conditioning, plumbing, janitorial, electrical, telephone, and other general building services;

(C) interior atriums, courts, etc., for public use; and

(D) fire tower and fire tower court.

(5) [~~(6)~~] Space allocation ratio–The ratio of the total usable office space (in square feet) to the total number of agency employees at the subject site. At sites where two or more agencies are co-located, the sum of agency employees at the site shall be considered.

(6) [~~(7)~~] Space use study–A study conducted by the commission to determine space requirements for the necessary functions of state agencies.

(7) [~~(8)~~] State agency–

[~~(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state, except the Texas High-Speed Rail Authority;~~]

(A) [~~(B)~~] the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Judicial Council Office of Court Administration [~~Texas Civil Judicial Council~~]; or

(B) [~~(C)~~] a university system or an institution of higher education as defined in the Texas Education Code, §61.003, as amended, other than a public junior college.

(8) [~~(9)~~] Usable office space–For the purpose of calculating an agency's space allocation ratio, that portion of the net usable square feet of an agency site which houses agency staff and operations other than those rooms specifically excluded under subsection (d) of this section.

(f) (No change.)

(g) The commission may allocate usable office space in excess of 153 square feet per agency employee, if the commission determines that:

(1)-(2) (No change.)

(3) based upon a space use study conducted by the commission, a particular type of space should be excluded; [~~or~~]

(4) a request is consistent with an agency's plan, previously accepted by the commission, for implementation of this rule; [.]

(5) an emergency lease is necessary to provide facilities in the best interest of the State and strict compliance would unavoidably and critically impair an agency's functions;

(6) a negotiated lease with a political subdivision is in the best interest of the State and strict compliance would unavoidably and critically impair an agency's functions; or

(7) a negotiated lease in the absence of competition is in the best interest of the State and strict compliance would unavoidably and critically impair an agency's functions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716372
Judy Ponder
General Counsel
General Services Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463-3960

♦ ♦ ♦

Part XV. Texas Health and Human Services Commission

Chapter 355. Medicaid Reimbursement Rates

Subchapter D. IFC/MR Programs, Reimbursement Methodology

1 TAC §§355.454, 355.456–355.458

The Texas Health and Human Services Commission (HHSC) proposes new 1 TAC §355.454 and 1 TAC §§355.456-355.458 of Chapter 355, Subchapter D, governing reimbursement methodology for the Medicaid Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and Home and Community-based Services (HCS) programs. The new sections would replace existing 1 TAC §355.454, 25 TAC §406.154 and 25 TAC §§406.156-.158 of Chapter 406, Subchapter D, governing reimbursement methodology, which are proposed contemporaneously for repeal in this issue of the *Texas Register.*

The proposed new sections accommodate a new reimbursement methodology developed for the ICF/MR and HCS programs. The new methodology was developed with model-based rates. The models included assumptions about direct care costs, including the number of direct care staff available for the provision of services, and wages and benefits that provide incentives for reducing turnover and improving the quality of staff. The proposed new sections establish a fiscal accountability process to track the amount of money spent on direct care. Providers are required to provide additional cost data to the department if their spending on direct care is less than 85% of the direct care portion of the modeled rate. These rules will allow the department to recover some of the direct care portion of the rate when a provider does not spend 90% of that portion of the rate on direct care. The rules also reflect the transfer of rules governing reimbursement methodology, in accordance with section 531.021(b), Government Code.

Steve Svadlenak, Associate Commissioner for Reimbursement Methodology, has determined that for each year of the first five-year period the new sections, as proposed, are in effect there will be no fiscal implications for state or local governments.

Mr. Svadlenak also has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated will be increased accountability regarding the expenditure of public funds. There is no anticipated economic cost to persons who are required to comply with the proposed new sections. There will be no effect on small business.

A public hearing will be held at 8:30 a.m. on January 8, 1998, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should notify Sheila Wilkins, Office of TDMHMR Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the content of the proposal may be directed to Ernest McKenney, TDMHMR. Comments on the proposed sections should be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Human Resources Code, Chapter 32, §32.021, and Government Code, Chapter 531, §531.021, which provide the Texas Health and Human Services Commission (HHSC) with the authority to administer federal medical assistance funds and administer the state's medical assistance program.

The section affects Human Resources Code, Chapter 32, and Government Code, Chapter 531, §531.021.

§355.454. Frequency of Reporting Costs.

(a) All state-operated provider agencies must annually submit full cost reports as directed by TDMHMR in accordance with Chapter 355, Subchapter F of Title 1 (relating to General Reimbursement Methodology for all Medical Assistance Programs) and §355.142 of Title 1 (relating to Cost Reporting Procedures).

(b) Non-state operated facilities must submit cost report information as directed by TDMHMR in accordance with Chapter 355, Subchapter F of Title 1 (relating to General Reimbursement Methodology for all Medical Assistance Programs).

(1) Except for facilities selected to file a full cost report for the same reporting period, all non-state operated facilities will annually submit direct service cost surveys according to §355.452 of Title 1 (relating to Cost Reporting Procedures) and §355.457 of Title 1 (relating to Fiscal Accountability).

(2) Beginning with the provider agencies' 1999 fiscal year, and every three years thereafter, a sample of non-state operated facilities will be required to submit full cost reports according to §355.452 of Title 1 (relating to Cost Reporting Procedures) and §355.458 of Title 1 (relating to Rebasing the Non-State Operated Facility Modeled Rates).

§355.456. Rate Setting Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Non-state operated facilities are further divided by classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows.

(1) Large facility - A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility - A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility - A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) State-operated facilities. There are no classes of state-operated facilities. State-operated facilities are reimbursed on a facility-based per diem rate that is determined by each facility's allowable costs, inflated forward to the rate period. The reimbursement rates include residential, day, and comprehensive medical services.

(d) Reimbursement rate determination for non-state operated facilities effective January 1, 1997. The department will present the reimbursement rates for non-state operated facilities to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption in accordance with Chapter 355, Subchapter F of Title 1 (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter.

(1) The initial modeled rates for calendar year 1997 are set according to subparagraph (7) of this paragraph.

(2) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the previous year's direct cost rates by the IPD-PCE as defined in Chapter 355, Subchapter F of Title 1 (relating to General Reimbursement Methodology for all Medical Assistance Programs). These rates are uniform by class of facility and client level-of-need, and determined prospectively and annually. There is no cost settlement.

(3) In the year 2000, the models from which the rates are based are analyzed to determine if rebasing is necessary for the rates paid in the year 2001. The models will be analyzed every three years thereafter to determine if rebasing is necessary.

(4) Reimbursement rates combine residential and day program services, i.e., payment for the full 24-hours of daily service.

(5) Reimbursement rates are differentiated based on client level-of-need as outlined in Chapter 355, Subchapter E of Title 1 (relating to Eligibility and Review). The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

(6) Modeled rates are rebased according to §355.158 of Title 1 (relating to Rebasing the Non-State Operated Facility Modeled Rates).

(7) The modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on a combination of data including, but not limited to, historical costs and operational information collected from a representative sample of ICF/MR providers. In the year 2000 and every three years thereafter, an advisory panel consisting of service providers, advocates, and department personnel, and an independent consultant retained by TDMHMR analyzes available information regarding historical cost and operational data and level-of-need assessment to determine if revisions to the models are necessary. TDMHMR will use the analysis to make recommendations regarding rates to the Texas MHMR Board.

(e) Rate determination for state-operated facilities. The department will present the reimbursement rates for state-operated facilities to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption in accordance with Chapter 355, Subchapter F of Title 1 (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter. Rates are facility specific, determined prospectively, and cost related. A per diem rate for each facility, which is based on the total projected allowable costs for selected cost centers, is divided by the total days of service the facility delivered either in the rate period or in the cost reporting period.

(1) Reimbursement rates for state-operated ICFs/MR are based on the most current costs reported on their cost reports.

(2) Costs for each facility are divided into three groups: salaries and benefits, comprehensive medical, and other. These costs are inflated by the factors identified in §355.704 of Title 1 (relating to Determination of Inflation Indices). Each facility will have its own per diem rate.

(3) Reimbursement rates for newly certified state-operated ICFs/MR are based on a pro forma model. The pro forma rate is the average of all available similarly sized state-operated facilities' per diem rates for that particular rate year. Newly certified facilities will be required to submit three-month cost reports to reflect costs incurred during the first 90 days of certified operation. These costs will be used to determine the facility's specific per diem rate within 180 days of certification.

(f) Experimental class. TDMHMR may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas MHMR Board, HHSC, and the Health Care Financing Administration (HCFA) approve the experimental methodology.

§355.457. Fiscal Accountability.

(a) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated facility reimbursement rates.

(b) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs from all non-state operated providers. The data will be collected on a cost report designed by TDMHMR or its designee in accordance with §355.152 of Title 1 (relating to Cost Reporting Procedures).

(1) Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care staff, QMRPs, registered nurses, and licensed vocational nurses. Direct service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or annual) can only be counted as a direct service cost if the employee has a right to the cash value of that leave upon termination.

(2) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs. The proportion of their salary and benefits that are compensation for direct services work can be included in the direct service cost report. The salary and benefits for this direct service work must be the lesser of the actual wages and benefits paid or the wages and benefits for a comparable direct services staff assumed in the model. The facility must have a procedure that specifies how direct service work time is allocated.

(3) The direct service portions of the rate are inflated on an annual basis as specified in §355.156(d)(2) of Title 1 (relating to Rate Setting Methodology).

(c) In 1997, providers are required to submit direct service costs on a report for a uniform three-month period of the year, as selected by the department. The report will reflect the provider's actual direct costs for the three-month period. The direct service costs will be compared to the "direct service cost" component of the modeled rates. In instances in which a provider's actual direct service costs, as captured by the quarterly cost reports, are less than 85% of the direct service revenues in the model, TDMHMR will require additional reporting of costs and other information from the provider.

(d) TDMHMR will review the results obtained from the direct services cost reports submitted for 1997 with representatives of provider associations and advocacy groups. In instances in which a provider's actual direct service costs are less than 85% of the direct service revenues in the model, TDMHMR may require the provider to:

(1) report more detailed financial information;

(2) submit to a quality assurance survey and review;

(3) submit to a utilization review of all services provided; and/or

(4) submit to a detailed audit of all relevant financial records.

(e) The department will require providers to report all direct costs incurred in their annual fiscal year. The department will compare the reported direct service costs to the direct service cost component of the modeled rates.

(1) The reporting period for providers whose fiscal year 1998 began in calendar year 1997, fiscal accountability (as specified in this section) applies to that portion of the fiscal year which occurs during calendar year 1998.

(2) The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units billed and paid, for services provided during the reporting period.

(3) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(4) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to TDMHMR the difference between the actual expenses incurred and 95% of the direct service revenues.

(5) Providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to TDMHMR 100% of difference between the actual expenses incurred and 85% of the direct service revenues plus 75% of the difference between 85% and 90% of the direct service revenues.

(6) Providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to TDMHMR 75% of the difference between the actual expenses incurred and 90% of the direct service revenues.

(7) Providers will be notified of their repayment status within 90 days of submitting their cost reports. A provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or by additional claims paid to the provider for services provided in the cost reporting period. Providers will submit the repayment amount within 60 days of notification.

(8) Repayment will be collected from the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(9) These entities will be jointly and severally liable for any repayment due to TDMHMR. Failure to repay the amount due when notified may result in a vendor hold on all of the facilities included in the cost report.

(10) Providers who wish to appeal the requirement to make payment to TDMHMR in accordance with this section may do so in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions).

§355.458. Rebasing the Non-State Operated Facility Modeled Rates.

In the year 2000 and at least every three years thereafter TDMHMR will assess the viability of the non-state-operated modeled rates using the following process:

(1) TDMHMR will seek to obtain a consultant to conduct an independent, detailed analysis of cost and operational information for a sample of ICF/MR service providers throughout the state in accordance with Texas Government Code, Chapter 2254.

(2) Site visits will be made to each of the sample providers to collect cost data and discuss operations.

(3) An advisory panel consisting of service providers, advocates, and department personnel will analyze available information regarding historical cost and operational data and level-of-need assessment. TDMHMR will use the analysis to make recommenda-

tions to the Texas MHMR Board for adjusting the rates or rebasing model-based rates.

(4) TDMHMR will recommend adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.

(5) Revised rates, as well as the rationale supporting the rates, will be presented to the Texas MHMR Board for approval and implementation. Final approval of the rates will be provided by HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716052
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 424–6576

♦ ♦ ♦

Subchapter F. Home and Community-Based Services (HSC)

1 TAC §355.722, §355.723

The Texas Health and Human Services Commission (HHSC) proposes new §355.722 and §355.723 of Chapter 355, Subchapter F, governing Medicaid home and community-based services (HCS) provided by the Texas Department of Mental Health and Mental Retardation (TDMHMR). The new sections would replace existing §355.722 and §355.723 of Chapter 355, Subchapter D, governing HCS, which were transferred to HHSC in accordance with Government Code, §531.021(b) and are proposed contemporaneously for repeal in this issue of the *Texas Register*.

The proposed new sections accommodate a new reimbursement methodology developed for the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and HCS programs. The new methodology was developed with model-based rates. The models included assumptions about direct care costs, including the number of direct care staff available for the provision of services, and wages and benefits that provide incentives for reducing turnover and improving the quality of staff. The proposed new sections establish a fiscal accountability process to track the amount of money spent on direct care. Providers are required to provide additional cost data to TDMHMR if their spending on direct care is less than 85% of the direct care portion of the modeled rate. These rules will allow the TDMHMR to recover some of the direct care portion of the rate when a provider does not spend 90% of that portion of the rate on direct care.

Steve Svadlenak, Associate Commissioner for Reimbursement Methodology, has determined that for each year of the first five-year period the new sections, as proposed, are in effect there will be no fiscal implications for state or local governments or small business.

Mr. Svadlenak also has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated will be increased accountability regarding the expenditure of public funds. There is no anticipated economic cost to persons who are required to comply with the proposed new sections. There will be no effect on small business.

A public hearing will be held at 8:30 a.m. on January 8, 1998, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should notify Sheila Wilkins, Office of TDMHMR Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the content of the proposal may be directed to Ernest McKenney, TDMHMR. Comments on the proposed sections should be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Human Resources Code, Chapter 32, §32.021, and Government Code, Chapter 531, §531.021, which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer federal medical assistance funds and administer the state's medical assistance program.

The sections affects Human Resources Code, Chapter 32, and Government Code, Chapter 531, §531.021.

§355.722. Reporting Costs.

(a) On an annual basis, all state-operated providers must submit cost reports as directed by TDMHMR or its designee in accordance with Chapter 355, Subchapter F of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(b) Non-state operated providers must report direct service costs as specified in this subsection and in accordance with Chapter 355, Subchapter F of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(1) Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care workers, registered nurses, licensed vocational nurses, and other personnel who provide activities of daily living training and clinical program services. Reporting of direct service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or vacation) can only be considered as a direct service cost if the employee has a right to a cash value of that leave upon termination.

(2) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs. The proportion of their salary and benefits that are compensation for direct services work can be included in the direct service cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care workers assumed in the model. The facility must have a procedure that specifies how direct service work time is allocated.

(3) Direct service costs are inflated on an annual basis as specified in §355.723(g)(1) of this title (relating to Reimbursement Methodology for Home and Community-based Services).

(4) On an annual basis, non-state operated providers will submit direct service cost data.

(5) Providers must report the following costs:

(A) Staff wages related to the delivery of direct services including residential assistance, day habilitation services, and the direct supervision of the delivery of these services.

(B) These costs may be either the provider's actual expense or contracted expenditures.

(c) Beginning with the provider agency's 1999 fiscal year and every three years thereafter, TDMHMR will select a sample of non-state operated providers which will be required to submit a full and accurate account of all costs related to the provision of services for a provider's fiscal year.

(d) TDMHMR will conduct desk audits of all full cost reports and/or direct service cost reports, and will conduct on-site reviews of a sample of providers submitting cost reports.

(e) Record keeping requirements. Each provider must retain records according to the department's requirements. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to TDMHMR.

(f) Noncompliance with record keeping requirements. Failure to maintain records that support the information submitted to TDMHMR constitutes a violation of the HCS provider contract.

(g) Allowable and unallowable costs. Providers must complete cost reports in accordance with Chapter 355, Subchapter F of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs).

(h) Certification. Providers must certify the accuracy of cost reports submitted to TDMHMR. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to TDMHMR requirements.

(i) Due date. Providers must submit direct service cost reports no later than 45 calendar days after the end of the reporting period or 45 days after the date that TDMHMR mails the form to the provider, whichever is later. Providers must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that TDMHMR mails the form to the provider, whichever is later.

(j) Extension of due date. TDMHMR may grant extensions of due dates for good cause. Good cause is defined as one that the provider could not reasonably be expected to control. A provider must submit a request for extension in writing to TDMHMR before the cost report due date. TDMHMR will respond to a request for extension within 10 working days of its receipt.

(k) Cost data. TDMHMR may at times require additional financial and statistical information to ensure the fiscal integrity of the HCS Program. Each provider must submit additional information to TDMHMR upon request, unless the information is not at the provider's disposal.

(l) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the HCS provider contract.

(m) Review of cost data. TDMHMR or its designee reviews each provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to TDMHMR's instructions or rules may be returned to the provider for proper completion.

(n) On-site audits. TDMHMR or its designee performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the HCS Programs. The number of on-site audits performed may vary.

(o) On-site audit standards. TDMHMR or its designee performs on-site financial audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(p) Access to records. Each provider must allow access to TDMHMR or its designee to any and all records necessary to verify cost data submitted to TDMHMR or its designee. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from TDMHMR constitutes a violation of the HCS provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in §355.702 of this title (relating to Methods for Cost Determination).

(q) Reviews of exclusions or adjustments. A provider who disagrees with TDMHMR's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.007 of this title (relating to Reviews and Administrative Hearings).

(r) Notification of exclusions and adjustments. TDMHMR will notify a provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §355.705 of this title (relating to Notification).

(s) Fiscal Accountability.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs including wages, and benefits, from all non-state operated providers. The data will be collected on a cost report designed by TDMHMR or its designee.

(3) In the initial rate period, providers are required to submit direct services costs on a report for a uniform three month period of the year, as selected by the department. The report will reflect the provider's actual direct costs for the three month period. The direct service costs will be compared to the "direct service cost" component of the modeled rates. Instances where a provider's actual direct service costs, as captured by the quarterly cost surveys, are less than 85% of the direct service revenues in the model, will require additional reporting of costs and other information from the provider.

(4) TDMHMR will review the results obtained from the direct services cost reports submitted for 1997 with representatives of provider associations and advocacy groups to further refine the fiscal accountability process. TDMHMR may require the provider to:

(A) report more detailed financial information;

(B) submit to a quality assurance survey and review;

(C) submit to a utilization review of all services provided, and/or

(D) submit to a detailed audit of all relevant financial records.

(5) The department will require providers to report all direct costs incurred on an annual fiscal year basis. The department will compare the reported direct service costs to the total direct service revenue.

(6) The fiscal accountability reporting period for providers whose fiscal year 1998 began in calendar year 1997, will include only that portion of the fiscal year which occurs during calendar year 1998.

(7) Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been billed, and paid, for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(8) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(9) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to TDMHMR the difference between the actual expenses incurred and 95% of the direct service revenues plus 50% of the difference between the actual expenses incurred and 90% of the direct service revenues.

(10) Providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to TDMHMR the difference between the actual expenses incurred and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(11) Providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to TDMHMR 50% of the difference between the actual expenses incurred and 90% of the direct service revenues.

(12) Where applicable, providers will be notified of the requirement to repay revenues within 90 days of submitting their cost reports. A provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or additional claims paid to the provider for services provided in the cost reporting period. Providers will submit the repayment amount within 60 days of notification.

(13) Recoupment will be collected from the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(14) Providers required by TDMHMR to repay revenues will be jointly and severally, liable for any repayment. TDMHMR may apply a vendor hold on Medicaid payments to all providers included in a report for not making the repayment amount to TDMHMR within 60 days of receiving notice.

(15) Providers who wish to appeal the requirement to make payment to TDMHMR should do so in accordance §409.106 of Title 25 (relating to Provider's Right to an Administrative Hearing).

§355.723. Reimbursement Methodology for Home and Community-Based Services (HCS).

(a) The department will present reimbursement rates to the Texas MHMR Board for approval and then to the Texas Health and Human Service Commission for final adoption according to Chapter 355, Subchapter F of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(b) Reimbursement rates apply to all non-state operated providers uniformly by type of service component provided and the individual's level-of-need. Reimbursements for state-operated providers are adjusted based on allowed costs reported at the end of the state fiscal year, in accordance with Chapter 355, Subchapter F of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs). The state-operated cost adjustment will not exceed allowable federal maximums.

(c) The department will present reimbursement rates annually to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption. The rates are prospective in nature.

(d) Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of service providers in Texas. The modeled rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(e) Rates for service components may also take into account the individual's level of need as defined in §355.721 of this title (relating to Payment Category Assignment and Provider Claims Payment). Rates vary by level of need for residential support, HCS foster care, and day habilitation.

(f) The modeled rates effective January 1, 1997, are based on cost components deemed appropriate for a provider. The determination of these components is based on historical cost and operational information collected from a representative sample of providers. An advisory panel consisting of service providers, advocates, an independent firm and department personnel, will analyze available information regarding historical cost and operational data and level-of-need assessment. The analysis will result in recommendations to the board for rates which are reasonable and adequate.

(g) The rates are derived for each type of service and, when appropriate, each level-of-need and include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs.

(1) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct cost portion of the previous year's rates by the IPD-PCE as defined in Chapter 355, Subchapter F of this title, (relating to General Reimbursement Methodology for All Medical Assistance Programs). TDMHMR will collect the direct costs on a survey during a three month period of the current rate year. The data will reflect the provider's actual costs for the fiscal quarter ending during the three-month period. The direct service costs will be compared to the direct service cost component of the modeled rates.

(2) Beginning with the provider's 1999 fiscal year, the modeled rates will be analyzed to determine if rebasing is necessary, using the following process:

(A) TDMHMR will seek to retain an independent firm in accordance with Texas Government Code, Chapter 2254, to perform a detailed analysis of cost and operational information for a sample of providers throughout the state.

(B) Site visits will be made to each of the sample providers to collect cost data and discuss operations.

(C) An advisory panel will be formed consisting of service providers, advocates, and department personnel who will analyze available information regarding historical cost and operational data and level-of-need assessment. TDMHMR will use the analysis to make recommendations to the board for rates which are deemed appropriate.

(D) The advisory panel, TDMHMR, and the independent firm will recommend adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.

(E) Revised rates, as well as the rationale supporting the rates, will be presented to the TDMHMR Board for interim approval and for referral to HHSC for final adoption.

(3) Refinement/adjustment of the cost factors and model assumptions will be considered, as appropriate, by the TDMHMR Board based on the overall industry results and recommendations of department staff. Final adoption of rates is made by the Health and Human Services Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716054
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 424-6576

♦ ♦ ♦

1 TAC §§355.771–355.773

The Texas Health and Human Services Commission proposes new 1 TAC §§355.771-355.773, Subchapter F concerning reimbursement for the mental retardation local authority pilot waiver operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR).

The proposed new subchapter accommodates Senate Concurrent Resolution 55 of the 74th Texas Legislature which, in part, directs the state Medicaid office to apply for a federal waiver to allow a pilot program to test enhanced local authority functions regarding services provided to individuals with mental retardation and other developmental disabilities. TDMHMR is conducting a pilot study that establishes a local authority structure for the provision of mental retardation services (Medicaid and non-Medicaid) that are funded by the department. Designated local authorities will ensure the provision of targeted case management for pilot waiver consumers, be the single point of access for services, recommend certification for pilot waiver providers, authorize pilot waiver services, and conduct pilot waiver utilization reviews. Current Home and Community-based Services (HCS) and Home and Community-based Waiver Services - OBRA (HCS-O) consumers will be grandfathered into the pilot waiver program.

Steve Svadlenak, Associate commissioner for Reimbursement Methodology for HHSC, and Don Green, chief financial officer, TDMHMR, have determined that for each year of the first five-year period the rule, as proposed, is in effect there will be for FY 1998 a total fiscal impact of $357,062, of which $222,378 is federal and $134,684 is state; for FY 1999 a total fiscal impact of $548,127, of which $341,374 is federal and $206,754 is state; for FY 2000 a total of impact of $560,186, of which $348,884 is federal and $211,302 is state; for FY 2001 a total impact of $571,950, of which $356,211 is federal and $215,740 is state; and for FY 2002 at total impact of $583,961, of which $363,691 is federal and $220,270 is state. There will be no fiscal impact upon local government or small business.

Ernest McKenney, director, Medicaid Administration, TDMHMR, has determined that for each year of the first five years the new sections are in effect the public benefit anticipated will be that data from the pilot on the role of the local authority will be used to improve service delivery systems prior to state wide implementation There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no effect on small business.

A public hearing will be held at 8:30 a.m., January 8, 1998, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the content of the proposal may be directed to Mr. McKenney. Comments on the proposed sections should be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Texas Human Resources Code, Chapter 32, §32.021, and Government Code, Chapter 531, §531.021, which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer federal medical assistance funds and administer the state's medical assistance program.

The sections affects Human Resources Code, Chapter 32, and Government Code, Chapter 531, §531.021.

§355.771. Payment Category Assignment and Provider Claims Payment.

(a) Payment to providers for supported home living, counseling and therapies, respite, and nursing is based upon the unit reimbursement rate for the specific service component.

(b) TDMHMR will reimburse providers the actual cost of minor home modifications, adaptive aids, and dental services in accordance with the waiver request and limits noted in 25 TAC §409.503 (relating to Service Components of the MRLA Program).

(c) Reimbursement for MRLA services foster/companion care, residential support, and day habilitation is based upon the program participant's payment category assignment and the reimbursement rate for the specific service component provided.

(1) The payment category for a program participant is based upon a level-of-need (LON) assignment approved by TDMHMR or its designee as part of the level-of-care determination according to 25 TAC §409.103 (relating to Payment Category

Assignment and Provider Claims Payment). LON assignments are derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the program applicant/participant and from selected items on the level-of-care assessment form.

(A) An MRLA program applicant or participant is assigned one of the following five levels of need:

(i) an intermittent LON (LON 1) is assigned if the ICAP service level score equals 7, 8, or 9;

(ii) a limited LON (LON 5) is assigned if the ICAP service level score equals 4, 5, or 6;

(iii) an extensive LON (LON 8) is assigned if the ICAP service level score equals 2 or 3;

(iv) a pervasive LON (LON 6) is assigned if the ICAP service level score equals 1; or

(v) a "pervasive plus" LON (LON 9) is assigned when the level-of-care assessment form documents an intervention code of 2 on at least one of Items 70-73.

(B) The LON assignment may be modified to take into account extraordinary service needs that result from unusual behavioral challenges. The LON in such a case combines the ICAP service level score and the needs identified on selected items on the level-of-care assessment form. A LON that does not directly correspond to the ICAP service level score will be subject to utilization review by TDMHMR.

(i) An individual who has very challenging behavior that requires a behavior intervention program that includes constant preventive actions by additional provider staff will be assigned the next higher LON from the original level. Additional staff may assist in the supervision of other individuals. Individuals originally assigned a pervasive LON will retain that assignment. Very challenging behaviors have the following characteristics:

(I) the behavior presents a danger to the individual or to others;

(II) the behavior warrants individualized objectives which include written intervention procedures;

(III) the frequency of the behavior is reduced only with constant staffing and a highly structured environment;

(IV) the behavior is difficult or impossible for a single staff person to control when it occurs;

(V) the behavior precludes some activities and an environment that cannot be structured. The interventions used to control the behavior require regular documentation, monitoring, and revisions as needed to meet the needs of the individual; and

(VI) the level-of-care assessment form indicates an intervention code of 1 on at least one of Items 70-73.

(ii) An individual who has extremely challenging behavior which poses a risk of harm to self or others and who requires constant one-to-one staff supervision, 16 hours per day while the individual is awake, will be assigned a pervasive plus LON. Extremely challenging behaviors have the following characteristics:

(I) the behavior may be life-threatening;

(II) the behavior warrants the highest priority of individualized objectives which include a written record of every occurrence of the behavior;

(III) the frequency of the behavior is difficult to reduce;

(IV) the consequences of the behavior are difficult to minimize; and

(V) the level-of-care assessment form indicates an intervention code of 2 on at least one of the Items 70-73.

(2) The MRA completes the initial and subsequent ICAP assessments, enters the resulting service level score on the level-of-care assessment form, and completes the remainder of the level-of-care assessment form. Information entered on the level-of-care assessment form must represent the applicant's/participant's current status. The completed level-of-care assessment form is submitted to TDMHMR.

(3) TDMHMR reviews and approves LON assignments. If TDMHMR or the MRA determines that information submitted for a LON was not correct or if information previously submitted has changed, the LON assignment is reevaluated and may be changed by TDMHMR or its designee. If the LON assignment is changed, reimbursement paid to providers will be adjusted back to the date of the original LON assignment in order to reflect the appropriate LON assignment.

(4) TDMHMR or its designee performs annual reevaluations of LON assignments in conjunction with annual reevaluations of ICF/MR LOC. If a higher LON assignment is requested at the time of the annual eligibility reevaluation, the MRA must submit supporting documentation to TDMHMR describing the changes in the individual's needs in accordance with 25 TAC §409.523 (relating to Utilization Review).

(5) MRAs requesting a change to a higher LON at times other than the annual reevaluation must retain supporting documentation describing the changes in the individual's needs.

(d) Units of service must be provided and documented according to the IPC.

(e) The provider must submit reimbursement requests in accordance with TDMHMR's procedures and accept TDMHMR's payment as payment in full for waiver services.

(f) Room and board are not included in the reimbursement rate to providers except in the case of overnight respite care provided in a residence other than the participant's own home or family home.

(g) The provider is not entitled to payment if:

(1) the client is ineligible for the MRLA program, Medicaid benefits, or is an inpatient of a hospital, nursing facility, or ICF/MR;

(2) TDMHMR has not authorized client enrollment on the Approval of Application for Enrollment form;

(3) services were delivered during gaps in the coverage period for the IPC as defined by the begin and end dates on the IPC;

(4) the initial claim for service is not received by TDMHMR within 95 calendar days from the end of the month of service or within 30 days of notification of approval of enrollment by TDMHMR, whichever is later;

(5) the provider bills for services not included in the IPC during the time the services were provided; or

(6) the service billed was not provided.

(h) Reimbursement for foster/companion care and residential support are not made for the day of discharge from the MRLA program.

§355.773. Reporting Costs.

(a) Submission of cost reports. All providers must submit cost reports as directed by TDMHMR or its designee in accordance with Chapter 355, Subchapter F of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(b) Recordkeeping requirements. Each provider must retain records according to the department's requirements. Providers must ensure that records are accurate and sufficiently detailed to provide the legal, financial, and statistical information requested by TDMHMR.

(c) Noncompliance with Recordkeeping requirements. Failure to maintain records that support the information submitted to TDMHMR could result in the provider being placed on vendor hold.

(d) Cost certification. Providers must certify the accuracy of cost reports submitted to TDMHMR. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to TDMHMR requirements.

(f) Due date. Providers must submit cost reports no later than 90 days after the reporting period or 90 days after the date that TDMHMR mails the form to the provider, whichever is later.

(g) Extension of due date. TDMHMR may grant extensions of due dates for good cause. Good cause is defined as a causal factor that the provider could not reasonably be expected to control. A provider must submit a request for an extension in writing to TDMHMR before the cost survey/cost report due date. TDMHMR will respond to a request for extension within 10 working days of its receipt.

(h) Cost data. TDMHMR may at times require additional financial and statistical information to ensure the fiscal integrity of the MRLA program. Each provider must submit additional information to TDMHMR upon request, unless the information is not at the provider's disposal.

(i) Failure to submit requested data. Failure to submit acceptable cost data by the due date could result in the provider being placed on vendor hold.

(j) Review of cost data. TDMHMR or its designee reviews each provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to TDMHMR's instructions or rules may be returned to the provider for proper completion.

(k) On-site financial audits. TDMHMR or its designee performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the MRLA program. The number of on-site audits performed may vary.

(l) On-site financial audit standards. TDMHMR or its designee performs on-site financial audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(m) Access to records. Each provider must allow access by TDMHMR or its designee to any and all records necessary to verify cost data submitted to TDMHMR or its designee. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from TDMHMR constitutes a violation of the MRLA provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in §355.702 of this title (relating to Methods for Cost Determination).

(n) Reviews of exclusions or adjustments. A provider who disagrees with TDMHMR's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.707 of this title (relating to Reviews and Administrative Hearings).

(o) Notification of exclusions and adjustments. TDMHMR will notify a provider of exclusions and any adjustments, including caps applied, to reported costs.

(p) Fiscal Accountability. Fiscal accountability is a process used to gauge the ongoing financial performance under the reimbursement rates.

(1) Fiscal accountability will consist of the annual reporting of direct service costs including wages, benefits, staffing, and supervisory span-of-control information from all MRLA providers. The data will be collected on a cost survey designed by TDMHMR.

(2) Providers are required to submit direct services costs on a survey during a uniform three-month period of the year, selected by the department. The survey will reflect the provider's actual direct costs for the three-month period. The direct service costs will be compared to the "direct service cost" component of the MRLA rates. Instances in which a provider's actual direct service costs, as captured by the quarterly cost surveys, are less than 85% of the direct service revenues in the model will require additional reporting of costs and other information from the provider.

(4) TDMHMR will review the results obtained from the direct services cost surveys with representatives of provider associations and advocacy groups to further refine the fiscal accountability process. Direct services cost surveys will be collected in each fiscal year. In instances which a provider's actual direct service costs are less than 85% of the direct service revenues in the model, TDMHMR may require the provider to:

(A) report more detailed financial information;

(B) submit to a quality assurance survey and review;

(C) submit to a utilization review of all services provided; and/or

(D) submit to a detailed audit of all relevant financial records.

§355.775. Reimbursement Methodology for the MRLA program.

(a) TDMHMR determines reimbursement rates according to Chapter 355, Subchapter F, of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(b) Reimbursement rates apply to all providers uniformly by type of service component provided and the individual's level-of-need. Case management is not a reimbursable service under the MRLA program.

(c) Rates are adopted at least annually by the board and are prospective in nature.

(d) Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of service providers in Texas. The rates will be based on the HCS rates which are set in accordance with 25 TAC §355,723 (relating to Reimbursement Methodology for Home and Community-based Services (HCS)), with the exception of the case management service component.

(e) Rates for service components may also take into account the individual's level of need as defined in §355.721 of this title (relating to Payment Category Assignment) and provider claims payment. Rates vary by level of need for residential support paid on a daily basis, MRLA foster/companion care, and day habilitation.

(f) Rates for respite care are paid on a daily basis. Respite care is not a reimbursable service for individuals who are receiving MRLA program foster/companion care or residential support.

(g) The rate for the indirect costs of the MRLA program is paid as a flat monthly fee. The rate is that portion of the HCS modeled rate set for case management that does not include the direct service cost and overhead for case management.

(h) The rates are derived for each type of service and, when appropriate, each level-of-need, to include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs. With the exception of the rate for indirect and administrative costs noted in subsection (g) of this section, rates will be set with the HCS rates in accordance with §409.118 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)).

(i) The modeled rates will be analyzed to determine if rebasing is necessary in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716056
Marina Henderson
Executive Director
Texas Health and Human Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 424–6576

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §9.2, §9.15

The Railroad Commission of Texas proposes amendments to §9.2 and §9.15, relating to definitions, and registration and transfer of LP-gas transports or container delivery units. The amendments clarify the fees required to be paid to the commission and other requirements to initially register or to transfer registration of LP-gas transports or other described vehicles for use in Texas.

Specifically, the proposed amendments to §9.2 add definitions for the terms "container delivery unit," "operator," "register" (or "registration"), and "transfer;" the proposed definitions clarify some terms which are used in the Commission's rules. Proposed amendments to §9.15(c) clarify the requirements of the table in subsection (e) by adding more explanation in new paragraphs (1) - (4) of the requirements for the various types of units, and explain how the registration fee will be calculated.

The proposed transfer fee (currently called reregistration fee) in §9.15(d) is proposed to be changed from a prorated amount based on $156 or $108, depending on the size of the unit, to a flat fee of $50. This fee is being changed because it will no longer be prorated, and will still comply with the commission's statutory authority in Texas Natural Resources Code, §113.131.

The substantive proposed amendments to the table in subsection (e) increase the registration fee for LP-gas transports with 3,500 gallons or less aggregate water capacity, commonly known as bobtails, from $96 to $108. The fee increase is necessary to comply with the commission's statutory authority in Texas Natural Resources Code, §113.131, regarding registration of LP-gas transports, which requires the registration fee be at least $100. The amount of $108 was chosen to keep the increase at a minimum and because it is divisible by 12, which is necessary for easy administration of the commission's staggered license and registration renewal system. In addition, the aggregate water capacity which identifies transports and bobtails has been changed from the current split at 5,000 gallons aggregate water capacity to 3,500. This change is being proposed to make Commission rules consistent with 49 Code of Federal Regulations, Parts 171 - 180, which are being proposed for adoption by the Commission in a separate rulemaking. The lowering of this gallonage will require a few more transports to pay the higher fee ($156 versus $108); however, commission records show only about 13 such units will be affected.

Proposed amendments in §9. 15(g) change the commission's inspection schedule from once every four fiscal years to once every five years to more accurately reflect the commission's practices and to correspond with the time period required for testing of containers, as specified in §9. 1753 of this title (relating to testing requirements).

Other proposed nonsubstantive amendments include changes in wording, punctuation, or organization to provide clarity.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The probable decrease in transfer fees paid to the commission proposed in §9.15(d) will be offset by the reduction in staff's time and paperwork required to prorate these fees. There will be slight increase in fees paid to the commission to register approximately 2,311 bobtails; the total amount should be about $27,732 (based on difference between $96 and $108, as proposed in the table in §9.15(e)). In addition, the change from 5,000 to 3,500 gallons aggregate water capacity will require about 13 more units to pay $156 rather than $108, an increase to the commission of $624. There will be no fiscal implications for local government.

Mr. Petru also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more accurate fees for registration and transfer of LP-gas transports and other described vehicles and a more streamlined process for the commission. The anticipated economic cost to small businesses and to individuals who register bobtails is an increase of $12 annually (from the current $96 to the proposed $108). The commission by statute must charge at least $100 for transport registration; the figure of $108 is the minimum increase possible that is divisible by 12, which allows commission staff to easily prorate amounts due for partial years, and therefore streamlines paperwork and other procedures required to stagger license and registration renewals throughout the year. Commission records indicate about 2,311 such units will be required to pay the $12 increase.

Also, the change from 5,000 to 3,500 gallons aggregate water capacity will affect about 13 units, whose owners will be required to pay $156 rather than $108 for transport registration. In addition, there will be a decrease in the transfer fee (currently referred to as "reregistration fee") in §9.15(e) from a maximum of $156 or $108, depending on the size of the container, down to $50. The economic cost to a particular small business or individual will depend on the number and type of LP-gas transports and other vehicles the entity registers.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas, 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1534. For additional information, call Thomas D. Petru at (512) 463-6949.

The amendments are proposed under Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.131, which authorizes the commission to establish registration and transfer fees for LP-gas transports and other described vehicles.

The Texas Natural Resources Code, §§113.051 and 113.131, are affected by the proposed amendments.

§9. 2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Container delivery unit–A vehicle used by an operator principally for transporting LP-gas in cylinders.

Operator–A licensee or ultimate consumer (as the word "operator" is used in 49 Code of Federal Regulations, Parts 171 - 180).

Register (registration)–The procedure to inform the commission of the use of an LP-gas transport or container delivery unit in Texas.

Transfer–The procedure to inform the commission of a change in operator of an LP-gas transport or container delivery unit already registered with the commission.

§9. 15. Registration and Transfer of LP-Gas. Transports or Container Delivery Units [~~Transport~~].

(a) An operator of a transport, as that term is defined in §9. 2 of this title (relating to definitions), equipped with LP-gas cargo tanks, or any container delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with the commission.

[~~(a) Bobtail trucks, semitrailers, or other motor vehicles either equipped with LP-gas cargo tanks or used principally for transporting LP-gas in portable containers shall be registered with the commission according to the requirements of Table 1 of this section.~~]

(b) Prior to a unit being used in LP-gas service, the operator of the unit shall register it in the name or names under which the operator conducts business in Texas.

[~~(b) A licensee or ultimate consumer who has purchased, leased, or obtained other rights to use any unit described in subsection (a) of this section shall register that unit by meeting the requirements of Table 1 of this section. The unit shall be registered in the name or names under which the licensee or ultimate consumer conducts business before the unit is used in LP-gas service.~~]

(c) The operator of the unit shall pay all registration fees in full and shall properly complete other requirements before registering any unit and placing it into LP- gas service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to the commission the appropriate registration fee;

(B) file a properly completed LPG Form 7, the DOT certification or any other documentation (such as a pencil rubbing of the applicable nameplate) indicating that the unit was built to MC-330/MC-331 specifications; and

(C) submit test results as shown in Table 1 of this section.

(2) To register an MC-330/MC-331 specification unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall submit to the commission the appropriate fee and file a properly completed LPG Form 7. In addition, if an expired unit has not been used in the transportation of LP-gas for over one year, the latest test results shall be filed with the commission before that unit may be returned to use.

(3) Nonspecification units registered with the commission as of June 1, 1989, shall remain continuously registered, or they shall be removed from the transportation of LP-gas. To register a non-specification unit, the operator of the unit shall submit to the commission the appropriate fee and file a properly completed LPG Form 7 and test results as shown in Table 1 of this section.

(4) Registration fees to be paid shall be calculated as follows:

(A) If a unit is to be registered under the name or names of an operator who has other units already registered with the commission, commission staff shall prorate the appropriate registration fee in order to maintain the same registration renewal period by:

(i) dividing the applicable registration fee by 12; and

(ii) multiplying that amount by the number of months remaining on the operator's existing annual license or annual registration, whichever is applicable.

(B) If a unit is the first unit to be registered under the name or names of an operator who is not licensed by the commission

or does not have other units already registered with the commission, the operator shall pay the appropriate registration fee in full. The registration renewal date shall be the date on which the commission confirms that all registration requirements are met.

[(c) Registration and reregistration fees shall be paid in full before any unit may be registered or reregistered, unless fees are prorated as described in subsection (d) of this section.]

[(d) During the first year when a transport registration changes from an August 31 renewal date to a staggered renewal date, the registration fees specified in Table 1 of this section shall be prorated by:]

[(1) dividing the applicable registration fee by 12; and]

[(2) multiplying that amount by the number of months assigned on the new staggered license.]

(d) [(c)]Transfer [Reregistration] fees shall be $50 for each applicable LP-gas vehicle, regardless of size or time remaining on any current license or registration period. The new operator of the LP-gas transport or container delivery unit shall pay this fee in full to the commission before placing such unit into LP-gas service in Texas. Transfer fees shall not be prorated. [specified in Table 1 of this section shall be prorated using the method described in subsection (d) of this section, except under subsection (d)(2), where reregistration fees shall be prorated by multiplying by the number of months remaining on the current license.]

[(f) Licensees shall file the following items with the commission for all LP-gas transports:]

[(1) LPG Form 7; and]

[(2) LPG Form 18B if the Form 4 decal is destroyed or mutilated.]

(e) [(g)]LP-gas transports shall comply with the requirements indicated in Table 1 of this section.
Figure: 16 TAC 9. 15(e)[(g)]

(f) [(h)] The commission may also request that an operator registering or transferring any unit:

(1) [the licensee] file a copy of the Manufacturer's Data Report; or

(2) have the unit [be] tested by a test other than those required by §9. 1753 of this title (relating to Testing Requirements).

(g) [(i)]At least once every five years, the commission may inspect currently registered LP-gas transports [Currently registered LP-gas transports shall be inspected by the commission at least once during the commission's last four fiscal years] for compliance with the LP-Gas Safety Rules prior to the commission issuing LPG Form 4. The commission shall notify the licensee of the date and time for inspection at least 24 hours in advance.

(1) If the unit does not comply, the commission may not register or transfer the unit until it is brought into compliance.

(2) If a commission inspection reveals that an LP-gas transport is unsafe for LP-gas service, the commission shall not issue LPG Form 4 until the operator makes the required corrections and notifies the commission, and the commission determines that the unit is in compliance.

[(j) If a commission inspection reveals that an LP-gas transport is unsafe for LP-gas service, the commission shall not issue LPG Form 4 until the required corrections have been made, the licensee notifies the commission, and the commission determines that the unit is in compliance.]

[(k) Nonspecification units registered as of June 1, 1989, shall be continuously registered, or they shall be removed from LP-gas service.]

(h) If an LPG Form 4 decal on a unit currently registered with the commission is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LPG Form 18B with the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716292
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463-7008

♦ ♦ ♦

Chapter

The Railroad Commission of Texas proposes amendments to §§9.651, 9.1751, and 9.1752, relating to applicability; MC-330 or MC-331 Department of Transportation specification requirements and exemption in 49 Code of Federal Regulations §173.315(k); and new §9.1351, relating to requirements for movable fuel storage tenders, such as farm carts. The sections describe requirements for nonspecification units, which are transports that do not meet the requirements of the United States Department of Transportation (DOT) specifications MC-330 or MC-331; for specification units; and for farm carts, most of which are also nonspecification units.

The Commission proposes the amendments and new section in order to adopt by reference 49 Code of Federal Regulations, Parts 171 - 180. In particular, the Commission proposes to adopt the new requirements found in DOT's rulemaking HM-200, which will become effective October 1, 1998, concerning the transportation of hazardous materials. The main effect of HM-200, specifically 49 CFR §171.1(a)(1), is that intrastate transportation of hazardous materials (including LP-gas) will also fall under DOT's jurisdiction. All LP-gas transportation vehicles for an entity which operates interstate must comply with MC-330 or MC-331 even if some of the vehicles are used only intrastate. Entities which operate interstate are not eligible for the 49 CFR §173.315(k) exemption.

In Texas, this impact will be greater than in most other states because of the number of nonspecification nonexempt units which will no longer be allowed to be used in LP-gas transportation service. DOT published its final rule HM-200 in the January 8, 1997, issue of the *Federal Register*, with an effective date of October 1, 1997. Subsequently, DOT extended the effective date to October 1, 1998. However, the final rule allows for an exemption and an extension of time until July 1, 2000, for compliance. DOT's regulations require all units operated in interstate or intrastate service to comply with the MC-330 or MC-331 specifications; however, certain nonspecification units that meet the exemption set forth in 49 CFR §173.315(k) may

remain in intrastate service. To do so, the container and vehicle must:

1. have a minimum working pressure of 250 psig;

2. have a water capacity of 3,500 gallons or less;

3. have been manufactured to the ASME Code prior to January 1, 1981;

4. comply with NFPA 58;

5. have been inspected and tested in accordance with subpart E of Part 180, Title 49;

6. be operated exclusively in intrastate operation in a state where its operation was permitted by that state prior to January 1, 1981;

7. have been used to transport LP-gas prior to January 1, 1981; and

8. be operated in conformance with all other requirements of this subchapter.

The Commission's LP-gas safety rules require all LP-gas transport units, both transport and bobtail vehicles, to be registered with the LP-Gas Section. Current Commission rules allow for specification, nonspecification, exempt, and nonspecification nonexempt units to be registered. Nonspecification and nonspecification nonexempt units that were not registered prior to June 1, 1989, may not be registered after that date, pursuant to §9.1752. Nonspecification units which qualify for the §173.315(k) exemption may remain in LP-gas transportation service.

The main impact of HM-200 in Texas relates to nonspecification nonexempt units currently registered by the Commission and used in the intrastate transportation of LP-gas. According to LP-Gas Section records, there are approximately 108 nonspecification nonexempt units (excluding an estimated seven 200-psig containers) that would have to be removed from LP-gas transportation service by October 1, 1998, or under the extension of time allowed by DOT, by July 1, 2000. The majority of the currently-registered nonspecification nonexempt units in Texas have a pressure rating of 200 psig and therefore do not meet the requirements of the exemption; most of these would not be allowed to remain in LP-gas transportation service after July 1, 2000. However, some of the 200-pound containers which were constructed to the U-69 ASME Code in effect until about 1948 could possibly remain in service. The Commission estimates about seven currently registered units could apply to DOT for an exemption; one entity operating one of these seven units could apply for the exemption, with the other entities joining the application. There is no guarantee that DOT will grant an exemption. The U-69 code required a safety factor of 5:1, and vessels constructed to the codes after U-69 were built to a safety factor of 4:1. A 200-pound tank built to the U-69 Code with a safety factor of 5:1 would have a safety rating of 1,000 pounds (200 pounds multiplied by five). A 250-pound tank built with a safety factor of 4:1 also has a safety rating of 1,000 pounds. The older 200-pound tanks would have the same safety factor, so DOT might grant an exemption for these tanks, provided the vessels also meet the other conditions of §173.315(k).

HM-200 also addresses other modes of transporting LP-gas such as farm carts. The carts in existence, which typically have a water capacity of 250 to 500 gallons, generally are not constructed to MC-330 or MC-331 specifications, but some of the carts may meet the exemption of §173.315(k). Any such carts which do not would be required to be removed from LP-gas transportation service by July 1, 2000. Commission rules do not require farm carts to be registered, so the dollar impact of this effect of HM-200 cannot be estimated.

HM-200 references the National Fire Protection Association pamphlet 58, *Standard for the Storage and Handling of Liquefied Petroleum Gases* (known as "NFPA 58"). The Commission has not adopted NFPA 58, but is currently drafting a separate rulemaking to propose this adoption by reference in the future. The Commission does not sell any NFPA publications; these may be obtained from the National Fire Protection Association at (800) 344-3555 or through the Texas Propane Gas Association at (512) 836-8620. The Code of Federal Regulations is a United States Department of Transportation publication; these are federal statutes and may be obtained through DOT or through most public libraries.

With regard to NFPA 58, there is one requirement in Chapter 6 of NFPA 58 which may have specific impact on some of the nonspecification units in Texas (although licensees should review all applicable sections of NFPA 58). Section 6-3.2.1 requires liquid hose of 1 1/2 inch and larger size or vapor hose of 1 1/4 inch and larger size to have emergency shutoff valves, unless one of the two listed exceptions is met. Most hose commonly used today is smaller than these sizes and so would not be affected; however, this could apply to some units which then would be required to have the required valves installed.

Regarding the proposals, amendments to §§9.651, 9.1751, and 9.1752, and proposed new §9.1351 would add language to adopt 49 CFR Parts 171 - 180, and the exemption found in §173.315(k). Sections 9.1751 and 9.1752 would have new titles which more accurately reflect the content of those sections.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the amendments and new section as proposed will be in effect there will be no fiscal implications for state or local governments.

Mr. Petru also has determined that for each year of the first five years the amendments and new section as proposed will be in effect the public benefit anticipated as a result of enforcing the sections as proposed will be uniform requirements for transports in all states and within Texas.

There is an anticipated economic cost to individuals or small businesses required to comply with the proposed amendments and new section. Approximately 108 units currently registered with the Commission will not be able to comply with the proposed amendments or new section, and will have to be removed from LP-gas transportation service by July 1, 2000. A basic new bobtail unit costs around $56,000; if all estimated 108 units have to be replaced, the total cost could be up to $6,048,000. This figure, however, does not include movable fuel storage tenders (sometimes called farm carts), which are not required to be registered with the Commission. Some farm carts may be eligible for exemption under 49 CFR §173.315(k); however, since the Commission does not have information about to the number or types of farm carts used in Texas, an economic cost is impossible to calculate. As well, a cost for a new farm cart is impossible to calculate since most LP-gas tank manufacturers have not constructed such units to date. Manufacturers believe this type of unit would be cost-

prohibitive, and that most entities would choose to replace these with smaller specification units.

Some nonspecification nonexempt units may be able to be modified to meet the §173.315(k) exemption, but the Commission can determine neither what modifications would have to be made, nor the cost. The decision to modify a nonspecification nonexempt unit or to purchase a specification unit will lie with the owners of these units.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1523. For more information, call Thomas D. Petru at (512) 463-6949.

Subchapter H. Nonspecification Transport Containers; Trucks Transporting LP-Gas in Portable Containers

16 TAC §9.651

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and pursuant to 49 U.S.C. §§5101 - 5127 and 49 C.F.R. §1.53.

The Texas Natural Resources Code, §113.051, is affected by the proposed amendment.

§9.651. Applicability.

This subchapter applies to nonspecification transport containers used in the transportation and distribution of LP-gas and to container delivery unit [~~each truck used principally for transporting LP-gas in portable containers~~]. All transports shall comply with MC-330 or MC-331, or the exemption in 49 Code of Federal Regulations, §173.315(k), by July 1, 2000, or those transports shall be removed from LP-gas transportation service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716293
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463-7008

♦ ♦ ♦

Subchapter P. Farm Carts

16 TAC §9.1351

The new section is proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and pursuant to 49 U.S.C. §§5101 - 5127 and 49 C.F.R. §1.53.

The Texas Natural Resources Code, §113.051, is affected by the proposed new section.

§9.1351. Requirements for Movable Fuel Storage Tenders, Such as Farm Carts.

All movable fuel storage tenders, such as farm carts, shall comply with MC-330 or MC-331, or the exemption in 49 Code of Federal Regulations, §173.315(k), by July 1, 2000, or those units shall be removed from LP-gas transportation service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716294
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463-7008

♦ ♦ ♦

Subchapter T. DOT MC-330 and MC-331 Transport Containers

16 TAC §9.1751, §9.1752

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and pursuant to 49 U.S.C. §§5101 - 5127 and 49 C.F.R. §1.53.

The Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

§9.1751. Applicability [~~Subchapter T~~].

This subchapter [~~Division XIV~~] applies to transport containers constructed to MC-330 or MC-331 [~~and 331~~] Department of Transportation (DOT) specifications used in the transportation and distribution of LP-gas.

§9.1752. MC-330 or[~~,~~] MC-331 Department of Transportation Specification Requirements and Exemption in 49 Code of Federal Regulations §173.315(k).

All transports not registered with the commission prior to June 1, 1989, shall [~~must~~] meet MC-330 or MC-331 DOT specifications. All transports shall comply with MC-330 or MC-331, or the exemption in 49 Code of Federal Regulations, §173.315(k), by July 1, 2000, or those transports shall be removed from LP-gas transportation service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716295
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463-7008

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 533. Practice and Procedure

22 TAC §§533.7, 533.15, 533.16, 533.18, 533.21, 533.22, 533.29, 533.30

The Texas Real Estate Commission (TREC) proposes amendments to §533.7, concerning conduct and decorum, §533.15, concerning disapproval of an application for a license, §533.16, concerning suspension and revocation of a license, §533.18, concerning presiding officer, §533.21, concerning ex parte consultations, §533.22, concerning subpoenas and depositions, §533.29, concerning prerequisites for judicial review, and §533.30, concerning judicial review. The amendments replace the terms salesman, chairman, his, and other gender-specific terms with terms which are not gender-specific, such as salesperson, chairperson and the persons. Where replacement of a single gender specific term is not possible without significant revision, another gender specific term such as herself would be added. House Bill 814, 75th Legislature (1997) requires TREC to replace the term salesman in all its rules and documents no later than January 1, 1999. The amendments also replace obsolete references to statutes with their current citations.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be conforming the sections with the agency s enabling legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§533.7. Conduct and Decorum.

Every party, witness, attorney or other representative shall comport himself or herself in all proceedings with proper dignity, courtesy and respect for the agency, the presiding officer, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

§533.15. Contested Case: Disapproval of an Application for a License.

Notice and hearings relating to disapproval of an application for a license issued by the agency shall be governed by the statute under which the application was filed and by the Administrative Procedure Act, Texas Government Code, §§2001.001 et seq. [~~Texas Civil Statutes, Article 6252-13a~~]. The agency shall also notify a sponsoring broker of the disapproval, but a sponsoring broker is not required to request a hearing or to be named or admitted as a party in the proceeding before the agency. A hearing pursuant to this section shall be held at a place designated by the agency. Failure to request a hearing timely waives judicial appeal, and the agency determination becomes final and unappealable.

§533.16. Contested Case: Suspension and Revocation of a License.

A license issued by the agency may not be suspended or revoked except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If a real estate salesperson [~~salesman~~] is a respondent, the agency will also notify the salesperson's [~~salesman's~~] sponsoring broker of the hearing. The hearing shall be held at a time and place designated by the agency, except that upon the written request of a respondent licensed as a Texas real estate broker or salesperson [~~salesman~~] filed within five days after receipt of the notice of hearing the hearing shall be held in the county where the principal place of business of the respondent is maintained. If the respondent is a real estate licensee who does not reside within this state, the hearing may be held in any county within this state.

§533.18. Contested Case: Presiding Officer.

(a)-(b) (No change.)

(c) The chairperson [~~chairman~~] of the commission or a member designated by the chairperson [~~chairman~~] shall preside over hearings conducted by the commission membership. The chairperson [~~chairman~~] or designated member shall administer oaths and rule on the admissibility of evidence or amendments to pleadings. The chairperson [~~chairman~~] or designated member may enter proposed orders which have been approved by the commission.

§533.21. Contested Case: Persons Designated Presiding Officer; Ex Parte Consultations.

Any person designated by the agency as a presiding officer in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or a [~~his~~] representative of those entitiesexcept on notice and opportunity for all parties to participate. Any person designated by the agency to render a final decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

§533.22. Contested Case: Subpoenas; Depositions.

The issuance of subpoenas and commissions and the taking and use of depositions in a contested case shall be governed by the Administrative Procedure [~~and Texas Register~~] Act, Texas Government Code, §§2001.001 et seq [~~§14 (Texas Civil Statutes, Article 6252-13a)~~]. Subpoenas and commissions may be issued by the presiding officer.

§533.29. Contested Case: Prerequisite to Judicial Review; Motions for Rehearing, Modification of Order or Probation.

(a)-(c) (No change.)

(d) A motion for rehearing, modification of order, or probation must be filed within 20 days after the date the party or the partys [~~his~~] attorney of record is notified of the final decision or order. Replies to the motion must be filed with the agency within 30 days after the party or the partys [~~his~~] attorney of record is notified of

the final decision or order. The presiding officer or the commission itself, as appropriate, must act on the motion within 45 days after the party or the partys [~~his~~] attorney of record is notified of the final decision or order. The presiding officer or the members of the commission, as appropriate, may, by written order, extend the time for filing, replying to, and taking action on a motion, not to exceed 90 days after the date the party orthe partys [~~his~~] attorney of record is notified of the final decision or order. In the event of an extension of time, a motion is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the party or the partys [~~his~~] attorney of record is notified of the final decision or order. The presiding officer or the members of the commission, as appropriate, may modify this schedule with the consent of the parties.

(e) Motions for rehearing, modification of order, or probation before the members of the commission shall be heard in accordance with this section. Except where the context clearly contemplates a different procedure to be followed before the members of the commission, any hearings before the presiding officer to consider motions shall be conducted in the manner required by this section.

(1) The chairperson [~~chairman~~] or the member appointed by the chairperson [~~chairman~~] to preside ("the presiding member") shall announce the case. The members shall consider a motion for rehearing prior to considering or acting upon a motion for modification of order or probation. The members shall consider a motion for modification of order prior to considering or acting upon a motion for probation. Upon the request of any party, the presiding member shall conduct a prehearing conference with the parties and their attorneys of record. The presiding member shall announce reasonable time limits for any oral arguments to be presented by the parties. The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion or reply is filed.

(2)-(4) (No change.)

(f) (No change.)

§533.30. Contested Case: Judicial Review.

A person who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case is entitled to judicial review. The petition shall be filed in a district court of Travis County, Texas or, if the contested case relates to the licensing of a real estate broker or salesperson [~~salesman~~] by the agency, in a district court of the county in which the hearing was held within 30 days after the decision or order of the agency is final and appealable. A copy of the petition must be served on the agency and any other parties of record. After service of the petition on the agency and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders new evidence to be taken before the agency, the agency may modify its findings and decision by reason of the additional evidence, and shall file such evidence and any modifications, new findings, or decisions with the reviewing court.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 2, 1997.

TRD-9716074
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 465–3900

♦ ♦ ♦

Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.2, 741.12, 741.32, 741.41, 741.62, 741.64, 741.65, 741.82, 741.84, 741.85, 741.91, 741.103, and 741.193, concerning speech-language pathology and audiology. Specifically, the sections cover definitions; committees; hearing screening; code of ethics; internship penalty; examination for applicant of a provisional license; requirements for assistant and dual licenses; documentation required to apply for license; and complaint procedures.

The amendments clarify that speech-language pathologists may only perform those services for which they are trained; include "sale" in the definition of "Sale or purchase"; identify committees and appointment of members; remove the frequency of 500 hertz used during a hearing screening to coincide with the Texas Department of Health Hearing Screening Program; establish time frames for maintenance of client records and when documentation must be available; revise language concerning penalty for practicing without appropriate supervisory acceptance form on file in board office to more clearly reflect the actual discipline that may be imposed; clarify when an applicant must pass the examination so that the language is consistent with the language in §741.103 relating to the documentation required to apply for licensure; clarify the initial client contact and how transcripts will be evaluated for applicants of the assistant license; clarify requirements for dual licenses; clarify documentation required if applicant is from out of state or graduated from a university not accredited by the American Speech-Language-Hearing Association's Council on Academic Accreditation; and add language to allow the executive secretary to designate another qualified person to handle specific aspects of the complaints procedures.

Dorothy Cawthon, Executive Secretary, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state government as a result of enforcing or administering the sections as proposed. The effect on local government, such as a public school, may occur if there were insufficient space available to maintain client records. The cost would depend on the number of caseload records maintained by each entity.

Ms. Cawthon has also determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will require that licensees maintain client records for a specific time should the client require the records in the future. The removal of 500 hertz

for hearing screening will reduce confusion because the Texas Department of Health Hearing Screening Program removed this frequency from their training program effective January 1, 1997. The amendments concerning the intern or assistant practicing without the appropriate supervisory acceptance form on file in the board office more accurately reflects the sanction that may be imposed since the board has not revoked a license for this type of violation. The amendment to allow the executive secretary to designate a qualified person to handle specific aspects of the complaints procedures will enable the investigative section to obtain or submit documentation as needed. The remaining amendments clarify existing language concerning the sale of a hearing instrument, the initial client contact, that speech-language pathologists must be competent to perform specific procedures, when the examination must be passed, how transcripts are evaluated, requirements for dual licensure and out of state applicants, lists the committees and how members are appointed. These clarifications should provide licensees, employers and the public a better understanding of the rules. There may be economic costs to small businesses and individuals if space is not available to maintain client records for the time specified. Some small businesses and individuals already maintain these records. The cost comparison between large and small businesses would depend on the caseload. There should be no effect on local employment.

Comments on the proposal may be submitted to Ms. Dorothy Cawthon, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (512) 834-6627. Public comments will be accepted for 30 days after publication of the proposal in the *Texas Register* .

Subchapter A. Introduction

22 TAC §741.2

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.2. Definitions.

The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

Practice of speech-language pathology - The application of nonmedical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of rendering or offering to render services or for participating in the planning, directing or conducting of programs which are designed to modify communicative disorders and conditions in individuals or groups of individuals. Speech-language pathologists may perform basic audiometric screening tests and aural rehabilitation or habilitation consistent with his or her training .

Sale or purchase - Includes the sale, [~~A~~] lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716050

Charles P. Kuratko

Chairperson

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 20, 1998

For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter B. The Board

22 TAC §741.12

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.12. Committees.

(a) The chairperson may appoint board members to committees to assist the board in its work. Other individuals may be appointed to committees. Appointed committee members shall serve a two year term. All committees appointed by the chairperson shall consist of no more than four members and shall make regular reports to the board by interim written reports or at regular meetings. The board shall direct all such reports to the executive secretary for distribution. Standing committees may include:

(1) complaints;

(2) rules changes;

(3) speech-language pathology scope of practice;

(4) audiology scope of practice;

(5) ethics; and

(6) legislative review.

(b) Board members may also be appointed to individually assist the board office with specific issues. The board member shall report any decisions made to the full board at the next scheduled meeting for ratification. Items that may be discussed include:

(1) fees/budget;

(2) applications/renewals;

(3) continuing education;

(4) exemptions to act;

(5) supervision of interns and assistants;

(6) public relations;

(7) health professions council; and

(8) fitting and dispensing of hearing instruments.

(c) Members appointed to the complaints committee shall consist of one audiologist, one speech-language pathologist and one public member. At least one of the past members, preferably the complaints committee chair, shall remain a member of a newly appointed committee for at least two committee meetings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716049
Charles P. Kuratko
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter C. Testing Procedures and Equipment

22 TAC §741.32

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.32. Hearing Screening.

(a) (No change.)

(b) Prior to August 1, 2000, hearing screening will be conducted as follows: 25 dB HL (re ANSI - 1989) at the frequencies of [~~500,~~] 1,000, 2,000, and 4,000 hertz (Hz).

(1)-(2) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716048
Charles P. Kuratko
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter D. The Standards of Professional and Ethical Conduct

22 TAC §741.41

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.41. Code of Ethics.

(a) The purpose of this subchapter is to establish the standards of professional and ethical conduct required of a speech-language pathologist, an audiologist, an intern and an assistant licensed or registered under Texas Civil Statutes, Article 4512j (Act), and constitutes a code of ethics as authorized by the Act, §17(a)(3). It is the responsibility of all speech-language pathologists, audiologists, interns, and assistants licensed or registered under the Act to uphold the highest standards of integrity and ethical principles. An individual licensed or registered under the Act:

(1) shall honor his or her professional responsibility to each client;

(A) The licensee or registrant shall:

(i)-(iv) (No change.)

(v) maintain accurate records of professional services rendered. Records must be maintained for seven consecutive years. If the client is a minor, records must be maintained until the client is 21 years of age, but in no event may the records be maintained for less than seven consecutive years. Personal client records shall be made available to a client or the parent or guardian of a client upon request; and

(vi) (No change.)

(B) (No change.)

(2)-(5) (No change.)

(6) shall respond to the board or board's designee for requests for documentation or information within 30 days;

(7) [~~(6)~~] who supervise assistants, interns, students or other supportive personnel is responsible for the services to the client that may be performed by these individuals. The supervising professional must ensure that all services provided are in compliance with this chapter;

(8) [~~(7)~~] who supervise assistants shall be responsible for evaluations, interpretation and case management;

(9) [~~(8)~~] shall not designate anyone other than a licensed speech-language pathologist to represent speech-language pathology to an Admission, Review and Dismissal (ARD);

(10) [~~(9)~~] shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from any health care professional. The provisions of the Health and Safety Code, §161.091, et. seq., concerning the prohibition of illegal remuneration apply to licensees;

(11) [~~(10)~~] who provides direct patient care must comply with Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers;

(12) [~~(11)~~] shall be subject to disciplinary action by the board if the licensee or registrant is issued a public letter of reprimand,

is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1; and

(13) [~~(12)~~] shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification:

(A) on a sign prominently displayed in the primary place of business of each licensee; and

(B) on a written document such as a written contract, a bill for service, or office information brochure provided by a licensee or registrant to a client or third party.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716047

Charles P. Kuratko

Chairperson

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 20, 1998

For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter E. Requirements for Licensure and Registration of Speech-Language Pathologists

22 TAC §§741.62, 741.64, 741.65

The amendments are proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

These proposed amendments affect Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.62. Requirements for an Intern in Speech Language Pathology License.

(a)-(l) (No change.)

(m) An original intern plan and agreement of supervision form signed by the supervisor and applicant must be submitted. If a major change in the plan occurs, such as a change of supervisor, the intern must cease practicing. A new form must be submitted and approved by the board office. The board office shall notify the intern when he or she may resume practice. To continue to practice without a current intern plan and agreement of supervision form on file in the board office may result in disciplinary action by the board [~~revocation of the intern's license~~].

(n)-(r) (No change.)

§741.64. Requirements for a Provisional Speech-Language Pathology License.

(a) The board may grant a provisional license to a person if the following requirements are met:

(1) (No change.)

(2) submits evidence of having passed the Educational Testing Service examination within the past ten years as referenced in §741.122 of this title (relating to Administration) or a state validated examination required for licensure in speech-language pathology; and

(3) (No change.)

(b)-(c) (No change.)

(d) The board shall issue a speech-language pathology license to the provisional license holder if he or she submits the following:

(1) (No change.)

(2) an original or certified copy of a passing score taken within the past ten years from the Educational Testing Service as referenced in §741.122 of this title.

(e) (No change.)

§741.65. Requirements for an Assistant in Speech-Language Pathology License.

(a) (No change.)

(b) An applicant for an assistant in speech-language pathology license must meet the following requirements:

(1) a baccalaureate degree with an emphasis in communicative [~~in communication~~] sciences and disorders;

(2)-(3) (No change.)

(4) the filing of original or certified copy of transcript(s) from a recognized regional accrediting agency, such as the Southern Association of Colleges and Universities, which shall be reviewed as follows: [~~in §741.61(11) of this title (relating to Requirements for a Speech-Language Pathology License); and~~]

(A) the board shall only accept course work completed with a grade of at least a "C" or for credit;

(B) the board shall consider a quarter hour of academic credit as two-thirds of a semester credit hour;

(C) academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means; and

(D) degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours can be verified as meeting the requirements of this paragraph. The applicant must bear all expenses incurred during the procedure; and

(5) (No change.)

(c) An applicant must possess a baccalaureate degree as required in subsection (b)(1) of this section; however, an applicant who does not possess a baccalaureate degree with an emphasis in communicative sciences or disorders but who completed 24 graduate hours in communicative sciences or disorders, which may include some leveling hours, may meet this requirement. The board or the board's designee will evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation.

(d) (No change.)

(e) Direct supervision of speech-language pathology duties assigned to the assistant shall be provided by a licensed speech-language pathologist.

(1) The [~~assistant's~~] initial client contact shall be conducted by the supervising licensed speech-language pathologist. This contact may include the evaluation of the client [~~directly supervised~~]. Thereafter, the minimum supervision requirements for an assistant by the licensed speech-language pathologist shall be no less than two hours a week, at least half of which is direct on site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the licensed speech-language pathologist must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

(2)-(3) (No change.)

(f)-(h) (No change.)

(i) To practice without a current supervisory responsibility statement on file in the board office may result in disciplinary action by the board [~~revocation of the assistant's license~~].

(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716046

Charles P. Kuratko

Chairperson

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 20, 1998

For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter F. Requirements for Licensure and Registration of Audiologists

22 TAC §§741.82, 741.84, 741.85

The amendments are proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

These proposed amendments affect Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.82. Requirements for an Intern in Audiology License.

(a)-(l) (No change.)

(m) An original intern plan and agreement of supervision form signed by the supervisor and applicant must be submitted. If a major change in the plan occurs, such as a change of supervisor, the intern must cease practicing. A new form must be submitted and approved by the board office. The board office shall notify the intern when he or she may resume practice. To continue to practice without a current intern plan and agreement of supervision form on file in the board office may result in disciplinary action by the board [~~revocation of the intern's license~~].

(n)-(r) (No change.)

§741.84. Requirements for a Provisional Audiology License.

(a) The board may grant a provisional license to a person if the following requirements are met:

(1) (No change.)

(2) submits evidence of having passed the Educational Testing Service examination within the past ten years as reference in §741.122 of this title (relating to Administration) or a state validated examination required for licensure in audiology; and

(3) (No change.)

(b)-(c) (No change.)

(d) The board shall issue an audiology license to the provisional license holder if he or she submits the following:

(1) (No change.)

(2) an original or certified copy of a passing score taken within the past ten years from the Educational Testing Service as referenced in §741.122 of this title (relating to Administration).

(e) (No change.)

§741.85. Requirements for an Assistant in Audiology License.

(a) (No change.)

(b) An applicant for an assistant in audiology license must meet the following requirements:

(1) a baccalaureate degree with an emphasis in communicative [~~in communication~~] sciences and disorders;

(2)-(3) (No change.)

(4) the filing of an original or certified copy of transcript(s) from a recognized regional accrediting agency, such as the Southern Association of Colleges and Universities, which shall be reviewed as follows: [~~in §741.81(11) of this title (relating to Requirements for an Audiology License); and~~]

(A) the board shall only accept course work completed with a grade of at least a "C" or for credit;

(B) the board shall consider a quarter hour of academic credit as two-thirds of a semester credit hour;

(C) academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means; and

(D) degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours can be verified as meeting the requirements of this paragraph. The applicant must bear all expenses incurred during the procedure; and

(5) (No change.)

(c) An applicant must possess a baccalaureate degree as required in subsection (b)(1) of this section; however, an applicant who does not possess a baccalaureate degree with an emphasis in communicative sciences or disorders but who completed 24 graduate hours in communicative sciences or disorders, which may include some leveling hours, may meet this requirement. The board or the board's designee will evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation.

(d) (No change.)

(e) Direct supervision of speech—language pathology duties assigned to the assistant shall be provided by a licensed audiologist.

(1) The [~~assistant's~~] initial client contact shall be conducted by the supervising licensed audiologist. This contact may include the evaluation of the client [~~directly supervised~~]. Thereafter, the minimum supervision requirements for an assistant by the licensed audiologist shall be no less than two hours a week, at least half of which is direct on site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the licensed audiologist must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

(2)-(3) (No change.)

(f)-(h) (No change.)

(i) To practice without a current supervisory responsibility statement on file in the board office may result in disciplinary action by the board [~~revocation of the assistant's license~~].

(j)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716045
Charles P. Kuratko
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter G. Requirements for Dual Licensure as a Speech-Language Pathologist and Audiologist

22 TAC §741.91

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.91. Requirements for Dual License.

The purpose of this section is to delineate the academic, practicum, supervised professional experience and examination required for dual licensure of a speech-language pathologist and audiologist.

(1)-(9) (No change.)

(10) An applicant must have obtained the equivalent of 36 weeks of full time or it's part-time equivalent, in each professional area, of supervised professional experience in which bona fide clinical work has been accomplished.

(A) (No change.)

(B) Prior to the beginning of an intern's required, supervised professional experience, the intern must be licensed as required by §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) and §741.82 of this title (relating to Requirements for an Intern in Audiology License) but must meet the requirements of paragraphs (1)-(9) of this section.

(11) An applicant must have passed [~~pass~~] the examinations within the past ten years in speech-language pathology and in audiology as referenced by §741.122 of this title (relating to Administration) before a license will be issued.

(12) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716044
Charles P. Kuratko
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter H. Application Procedures

22 TAC §741.103

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.103. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) must submit the following:

(1)-(2) (No change.)

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association, must submit an original letter from the American Speech-Language-Hearing Association stating the Council on Academic Accreditation accepted the course work and clinical practicum;

(4) (No change.)

(5) an original report of completed internship form obtained from the board office completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor must also submit a copy of his or her diploma or transcript showing the master's

degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor must submit an original letter from the American Speech-Language-Hearing Association stating the certificate of clinical competence is currently held in addition to proof of a master's degree in communicative sciences and disorders; and

(6) (No change.)

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) must submit the following:

(1)-(2) (No change.)

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association, must submit an original letter from the American Speech-Language-Hearing Association stating the Council on Academic Accreditation accepted the course work and clinical practicum;

(4)-(6) (No change.)

(c)-(e) (No change.)

(f) An applicant applying for a speech-language pathology temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.86 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) must submit the following:

(1)-(3) (No change.)

(4) an original course work and clinical experience form obtained from the board office completed by the director or designee of the college or university attended which verifies the applicant met the requirements established in §741.61(2)-(9) of this title or §741.81(2)-(9) of this title; [~~and~~]

(5) an original report of completed internship form obtained from the board office completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor must also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a valid copy of a license to practice in that state. If that state did not require licensure, the supervisor must submit an original letter from the American Speech-Language-Hearing Association stating the certificate of clinical competence is currently held in addition to proof of a master's degree in communicative sciences and disorders; and [~~.~~]

(6) an applicant who completed the internship in another state and graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association, must submit an original letter from the American Speech-Language-Hearing Association stating the Council on Academic Accreditation accepted the course work, clinical practicum and the clinical fellowship year.

(g)-(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716043
Charles P. Kuratko
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter M. Denial, Probation, Suspension, or Revocation of Licensure or Registration

22 TAC §741.193

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j.

The proposed amendment affects Texas Civil Statutes, Article 4512j. The proposed amendment to §741.32 also affects the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et. seq., relating to registered nurses.

§741.193. Complaint Procedures.

(a) (No change.)

(b) Upon receipt of a complaint, the executive secretary or designee may send to the complainant an official form which the complainant should complete and return to the board office.

(c)-(d) (No change.)

(e) The executive secretary or designee may notify the alleged violator of the complaint and request a written response within 30 days.

(f) The executive secretary or designee shall collect all information related to the complaint. The chairperson shall appoint a committee to review the complaint and the supporting documentation to determine if there is sufficient evidence to request further investigation.

(g) (No change.)

(h) The committee may request further investigation of the complaint. After investigation has been completed, the person completing the investigation shall submit his or her findings to the committee and the executive secretary or designee. The written investigative report shall set out all pertinent facts obtained during the investigation.

(i)-(k) (No change.)

(l) The executive secretary or designee shall determine whether the complaint fits within the category of a serious complaint affecting health or safety of clients or other persons.

(m)-(n) (No change.)

(o) The executive secretary or designee shall maintain a complaint tracking system.

(p) (No change.)

(q) The executive secretary or designee shall review the reports and notify the complaints committee if the requirements of the disciplinary action are not met.

(r) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716042

Charles P. Kuratko

Chairperson

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 20, 1998

For further information, please call: (512) 458–7236

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part V. Center for Rural Health Initiatives

Chapter 500. Executive Committee for the Center for Rural Health Initiatives

Subchapter D. Texas Rural Physician Assistant Loan Reimbursement Program

25 TAC §500.103, §500.107

The Center for Rural Health Initiatives (Center) proposes amendments to §500.103 and §500.107, concerning the Texas Rural Physician Assistant Loan Reimbursement Program. Specifically, the amendment to §500.103 revises the definition of "Approved Program", and the amendment to §500.107 revises the criteria for eligibility of a physician assistant to participate in the Rural Physician Assistant Loan Reimbursement Program. These amendments are being proposed pursuant to House Bill 2099, 75th Legislature, 1997, which eliminates the requirement that recipients of loan reimbursement under the program be graduates of an accredited Texas physician assistant program. The purpose of the amendment is to make program funds available to graduates of accredited in-state and out-of-state physician assistant programs who are also providing primary health care services in rural Texas counties designated as health professional shortage and/or medically underserved areas.

Carol Peters, Program Administrator, the Center for Rural Health Initiatives, has determined that for the first five-year period the sections are in effect there are implications for state government as a result of amending these sections. By law and appropriation, $90,000 in state funds from licensure fees paid by Texas physician assistants are transferred to the Center for each year of the biennium for administration of the Rural Physician Assistant Loan Reimbursement Program. In both FY 1996 and FY 1997, an insufficient number of Texas physician assistant program graduates serving rural shortage and underserved areas applied to the program, resulting in unexpended program funds for each year of the past biennium. The amendments will result in an increased number of eligible applicants and a greater expenditure of funds over the first five-year period.

Ms. Peters also has determined that for each year of the first five years the sections are in effect, the long-term benefit to residents of rural areas with a high need for primary health care services will be improved access to and availability of those services. There will be no negative effect on small businesses, no costs to persons who comply with the requirements of the proposed sections, and no impact on local employment.

Comments on the proposed amendments may be submitted to Carol A. Peters, Program Administrator, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas 78767-1708, (512) 479-8891. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, Chapter 106, Subchapter C, which authorizes the Executive committee of the Center for Rural Health Initiatives to adopt rules to administer the Center's programs.

No other statutes, articles, or codes are affected by the proposed amendments.

§500.103. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Approved Program - A [~~Texas~~] physician assistant or surgeon assistant training program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the American Osteopathic Association.

(2) Center - The Center for Rural Health Initiatives established by the Omnibus Health Care Rescue Act passed by the 71st Session of the Texas Legislature.

(3) Executive Committee - The nine member governing body of the Center for Rural Health Initiatives appointed by the governor, lieutenant governor and speaker.

(4) Executive Director - The chief executive officer of the Center for Rural Health Initiatives.

(5) Rural Health Professional Shortage Area (HPSA) - Any area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census that is recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians. The degree-of-shortage designations, also determined by the United States Department of Health and Human Services, range from groups one to four, with one representing the highest degree of shortage.

(6) Rural Medically Underserved Area (MUA) - Any area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census that is recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services or its successors, as an area with a demonstrated shortage of personal health services. Areas with the lowest Index of Medical Underservice (IMU) score, also determined by the United States Department of Health and Human Services, are the most severely medically underserved.

(7) RPALR Program - The Rural Physician Assistant Loan Reimbursement Program established by the Physician Assistant Licensing Act passed by the 73rd Session of the Texas Legislature.

(8) Service obligation period - A consecutive 12 calendar-month period immediately preceding the date of application and during which a physician assistant provided health care services as a physician assistant in a rural health professional shortage area or rural medically underserved area.

§500.107. Requirements for an Eligible Educational Loan, an Eligible Lender or Holder, and an Eligible Physician Assistant.

(a)-(c) (No change.)

(d) A physician assistant eligible for loan reimbursement is one who:

(1) (No change.)

(2) satisfactorily completed an approved [~~Texas~~] physician assistant training program within ten years prior to the date of application; and

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716389
Laura Jordan
Executive Director
Center for Rural Health Initiatives
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 479-8891

♦ ♦ ♦

Subchapter E. Texas Health Service Corps Program

25 TAC §§500.201, 500.203, 500.205, 500.207, 500.209, 500.211, 500.213, 500.215, 500.217

The Center for Rural Health Initiatives (Center) proposes new §§500.201, 500.203, 500.205, 500.207, 500.209, 500.211, 500.213, 500.215, and 500.217, concerning the Texas Health Service Corps Program which will provide stipends to resident physicians in Texas primary care residency programs who establish a legal obligation to provide physician services in medically underserved areas in Texas. The proposed new sections establish the purpose and administration of the program; provide definitions; specify the means for disseminating information and the center's responsibility to conduct research, collect data and make reports; establish the procedures for registering medically underserved areas and resident physicians for the program and matching resident physicians with qualifying areas; establish the eligibility requirements and selection process for resident physicians; and establish the procedures for awarding stipends.

Carol A. Peters, Program Administrator, the Center for Rural Health Initiatives, has determined that for the first five years the sections are in effect there will be fiscal implications for public state entities. State government is required to fully fund the program from state general revenue funds by providing $100,000 in state funds to the Center for each year of the current biennium. The Center will award stipends based on the availability of these funds.

Ms. Peters also has determined that beginning as early as the second year of the first five years the sections are in effect, the long-term benefit to residents of underserved areas with a high need for primary health care services will be improved access to and availability of those services. There will be no negative effect on small businesses or local employment and there will be no cost to persons who comply with the requirements of the proposed sections.

Comments on the proposed new rules may be submitted to Carol A. Peters, Program Administrator, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas 78767-1708, (512) 479-8891. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, Chapter 106, Subchapter C, which authorizes the Executive Committee of the Center for Rural Health Initiatives to adopt rules to administer the Center's programs.

No other statutes, articles, or codes are affected by the proposed new rules.

§500.201. Purpose, Administration, and Delegation of Powers and Duties.

(a) The Texas Health Service Corps is a physician recruitment program for medically underserved areas in Texas. The purpose of the Texas Health Service Corps Program is to encourage physicians trained in the primary care specialties to establish and maintain practices in underserved areas in Texas. To accomplish this goal, the program provides stipends to resident physicians who enter into a contract with the Center for Rural Health Initiatives. The contract requires the physician, upon completion of residency training, to provide services in a medically underserved area of Texas for at least one year for each year that the physician receives the stipend.

(b) The Center for Rural Health Initiatives, or its successor or successors, shall administer the Texas Health Service Corps Program.

(c) The Executive Committee of the Center for Rural Health Initiatives delegates to the executive director the necessary powers, duties, and functions to administer the Program.

§500.203. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Center - The Texas Center for Rural Health Initiatives established by the Omnibus Health Care Rescue Act passed by the 71st Session of the Texas Legislature.

(2) Executive Committee - The nine member governing body of the Center for Rural Health Initiatives appointed by the governor, lieutenant governor and speaker.

(3) Medically Underserved Community - A community located within a whole county HPSA or whole county MUA.

(4) Primary Care Speciality - A medical speciality in family practice, general internal medicine, general pediatric medicine, or general obstetrics and gynecology.

(5) Program - The Texas Health Service Corps Program established within Health and Safety Code, Subchapter E, Chapter 106, by the 75th Session of the Texas Legislature.

(6) Resident Physician - A medical graduate of an accredited allopathic or osteopathic medical school within the United States of America who is enrolled in an accredited residency training program in Texas.

(7) Rural County - Any one of the 196 counties within Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census.

(8) Service Obligation - A defined period of time during which a physician must provide physician services to repay a previous loan, grant, scholarship, or stipend.

(9) Stipend - A maximum payment of $15,000 per year paid to a resident physician selected to participate in the Program.

(10) Whole County Health Professional Shortage Area (HPSA) - Any whole county in Texas recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians. The degree-of-shortage designations, also determined by the United States Department of Health and Human Services, range from groups one to four, with one representing the highest degree of shortage and the areas with the greatest need for primary care physicians.

(11) Whole County Medically Underserved Area (MUA) - Any whole county in Texas recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services, or its successors, as an area with a demonstrated shortage of personal health services. Areas with the lowest Index of Medical Underservice (IMU) score, also determined by the United States Department of Health and Human Services, are the most severely medically underserved areas and the areas with the greatest need for personal health services.

§500.205. Dissemination of Information, Research, Data Collection, and Reports.

(a) The Center shall disseminate information about the Texas Health Service Corps Program to all interested parties. The center shall publish and send information about the program to Texas medical schools, Texas primary care residency programs, appropriate state agencies, interested physician professional associations and, upon request, to individuals.

(b) The center shall conduct field research, collect information, and prepare statistical and other reports relating to the need for the program.

§500.207. Requirements for Registering Eligible Underserved Communities.

(a) A health care entity located in a county designated as a whole county medically underserved area (MUA) and/or a whole county health professional shortage area (HPSA) is eligible to register to participate in the Program.

(b) The Center ranks eligible communities for program participation. The Center ranks communities as having a greater need for primary care physicians if the county in which the community is located is rural. The Center may consider other factors in ranking the community, including, but not limited to, factors such as the county's MUA or HPSA score. The Center assigns the most favorable rating to the communities the Center determines to have the greatest need for primary care physicians.

(c) Communities register for the program by completing a Texas Health Service Corps Program Community Registration Form, or other form designated by the Center, during the annual registration period specified by the Center.

(d) If a community is accepted into the Program and the physician matched with the community is either receiving a stipend or serving the resulting stipend obligation, the community is ineligible to re-register for participation until the physician has fulfilled the obligation.

§500.209. Requirements for Registering Eligible Resident Physicians.

(a) A physician is eligible to register for participation in the Texas Health Service Corps Program if the physician:

(1) is enrolled in an accredited Texas residency program in a primary care specialty;

(2) is enrolled in an accredited Texas primary care residency program which holds an institutional permit to practice medicine in Texas from the Texas State Board of Medical Examiners;

(3) has not defaulted on any educational loans; and

(4) does not have a service obligation to any entity; or,

(5) is a fourth year medical student who will meet the requirements provided in paragraphs (1)-(4) of this subsection, by June 30 in the year of application.

(b) Eligible physicians register for the program by completing a Texas Health Service Corps Program Physician Registration Form, or other form designated by the Center, during the annual registration period specified by the Center.

(c) The Center may rank physician applicants by the type of primary care specialty the physician has selected or by the number of years remaining to complete the residency program.

(d) A physician receiving assistance under any state educational loan repayment program or other state incentive program is ineligible to receive a stipend under this program. A physician participating in any local, state, or federal loan forgiveness program that requires a service obligation also is ineligible to receive a stipend.

§500.211. Matching Eligible Communities with Eligible Resident Physicians.

(a) The Center sends the ranked profiles of all registered resident physicians to all the registered communities, and the ranked profiles of all registered communities to the registered resident physicians at a time designated annually by the Center.

(b) Upon receipt of the profiles, eligible communities and eligible physicians may contact each other to determine if the community is suitable for the physician and the physician is suitable for the community. Once a match between a community and a physician is made, the community and the physician jointly complete a Texas Health Service Corps Program Joint Application and submit it to the Center no later than June 30 of each year.

(c) In July of each year, the Center reviews the joint applications and awards the stipends to the resident physicians matched with the communities ranked as having the greatest need for a primary care physician.

§500.213. Contractual Requirements for Matched Communities and Resident Physicians.

(a) A resident physician selected to receive a stipend from the Texas Health Service Corps Program must enter into a written contract with the Center for Rural Health Initiatives before the award is received. The contract between the resident physician and the Center for Rural Health Initiatives must specify that:

(1) within 90 days of completion of the residency program, the physician must initiate a medical practice to provide physician services, as defined by the contract, in a medically

underserved area for one year for each year that the physician receives the stipend;

(2) the physician must not discriminate against patients seeking care based on their ability to pay or whether payment is made through Medicaid or Medicare;

(3) the physician must accept Medicare assignment and make every attempt to enroll as a provider in the Medicare and Texas Medicaid Programs unless enrollment is denied by either the Medicare or Texas Medicaid Programs;

(4) the physician must cooperate with the Center in its efforts to collect information and data relevant to the program;

(5) the physician must keep the Center informed of all changes in address and phone number;

(6) if the physician does not provide physician services in the medically underserved area, provides the services for less than the required term, or is determined ineligible to participate in the program after receiving program funds, within 90 days from the date of completion of the residency program, the physician is liable to the state for payment of an amount that is a total of:

(A) the total amount of the stipend the physician has received;

(B) interest on the total amount for the period beginning on the date the physician signed the contract and ending on the date the physician repays the amount of the stipend computed at a rate equal to the sum of:

(i) the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the contract is signed; and

(ii) 5.0 %; and

(iii) the state's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees; and

(7) the center must report a physician whose repayment account is delinquent, or who fails to repay his or her cash obligation, to the Texas State Board of Medical Examiners for appropriate action; and

(b) The contract must include any and all other provisions determined necessary by the Center for the effective and efficient administration of the Program.

§500.215. Awarded Stipends.

(a) Stipends are awarded beginning with July of the year in which the joint application was received, reviewed, and selected for Program participation. The Center may renew awards annually, based on the resident physician's submission of a noncompetitive renewal application. The Center may withdraw a stipend if the Center determines the resident physician is no longer eligible to qualify for participation in the program.

(b) The number of stipends awarded annually is determined by the amount of funds available for the program each year.

(c) A physician is not eligible for a stipend for a period longer than is ordinarily and customarily required for completion of residency training in the chosen primary care specialty.

(d) The maximum amount of the stipend is $15,000 per year. The Center makes stipend payments to the resident physicians on a quarterly basis for the previous quarter, beginning in October and followed by payments in January, April and July, until the ordinary and customary period required to complete the chosen residency has ended.

§500.217. Provision for Effective and Efficient Administration of the Program.

The Executive Director of the Center for Rural Health Initiatives has the administrative authority to establish policies if unusual or exceptional circumstances arise concerning either eligible communities or eligible physicians and those circumstances are not adequately addressed by the rules contained within this subchapter

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716385
Laura Jordan
Executive Director
Center for Rural Health Initiatives
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 479-8891

♦ ♦ ♦

Subchapter F. Medically Underserved Community - State Matching Incentive Program

25 TAC §§500.301, 500.303, 500.305, 500.307, 500.309, 500.311, 500.313, 500.315, 500.317, 500.319, 500.321, 500.323, 500.325, 500.327

The Center for Rural Health Initiatives (Center) proposes new §§500.301, 500.303, 500.305, 500.307, 500.309, 500.311, 500.313, 500.315, 500.317, 500.319, 500.321, 500.323, 500.325 and 500.327, concerning the Medically Underserved Community-State Matching Incentive Program which will provide assistance to communities in recruiting primary care physicians to high need areas.

In 1997 the 75th Legislature adopted Senate Bill 913, which transferred the Medically Underserved Community-State Matching Incentive Program to the Center from the Texas Department of Health. New Subchapter F is being added to comply with the statutory provisions of Senate Bill 913. The Texas Board of Health will soon consider repeal of 25 TAC §§39.61 - 39.75 relating to Medically Underserved Community - State Matching Incentive Program. The proposed rules (proposed as Subchapter F) are basically the same rules adopted by the Texas Department of Health with statutory changes mandated by the 75th Texas Legislature.

The new sections will implement the Medically Underserved Community-State Matching Incentive Program as established by the Health and Safety Code, Chapter 106, which directs the Center to allocate funds to qualified community groups in medically underserved areas to cover certain costs of establishing physicians' practices. These sections define the purpose of the program, and the eligibility criteria for contributing communities, and participating physicians; establish procedures for applying for funds and the prioritization of need among eligible applicant communities; establish specifications for matching fund contracts, including requirements for community contributions of funds; and specify reporting and monitoring requirements.

Laura Jordan, Executive Director, the Center for Rural Health Initiatives, has determined that for the first five-year period

the sections are in effect there will be fiscal implications for local public entities and state entities as a result of enforcing or administering the rules. Local public entities applying for the matching funds must provide their share of the funds to cover eligible costs. State government is required to match local funds, using state general revenue funds in the amount of $250,000 each year of the state biennium.

Ms. Jordan also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of the availability of matching funds will be to enhance the abilities of underserved communities in attracting and retaining primary care physicians by providing funds to cover certain costs of establishing physicians' practices. There is no anticipated effect on small businesses or anticipated economic cost to persons who are required to comply with the rules as proposed. The proposed rules may have an impact on local employment. This impact would be positive with an increase in local jobs, tax base, and income.

Comments on the proposed new rules may be submitted to Laura Jordan, Executive Director, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas 78767-1708, (512) 479-8891. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register* .

The new sections are proposed under the Health and Safety Code, Chapter 106, Subchapter C, which authorizes the Executive Committee of the Center for Rural Health Initiatives to adopt rules to administer the Center's programs.

No other statutes, articles, or codes, are affected by the proposed new rules.

§500.301. Introduction.

(a) Purpose. These sections, listed in Subparagraph F of this chapter (relating to Executive Committee for the Center for Rural Health Initiatives) implement the provisions in the Health and Safety Code, Subchapter F, Chapter 106, by establishing program rules for the allocation of grant funds to qualified communities through the Medically Underserved Community-State Matching Incentive Program. State grants match funds committed by medically underserved communities to cover start-up costs for primary care physicians' practices.

(b) Funding. These sections, listed in Subparagraph F of this chapter (relating to Executive Committee for the Center for Rural Health Initiatives) describe the criteria and procedures to be used by the Texas Center for Rural Health Initiatives (Center) in determining the communities eligible for funding and the funding allocation method.

(c) Administration. The Center shall allocate funds to eligible communities based on the procedures specified in these sections, listed in Subparagraph F of this chapter (relating to Executive Committee for the Center for Rural Health Initiatives).

§500.303. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Center - The Texas Center for Rural Health Initiatives.

(2) Executive Committee - The Executive Committee Governing Board of the Center for Rural Health Initiatives.

(3) Full-time practice - At least 40 hours of patient-related medical practice per week.

(4) Medically underserved community - A community meeting any of the following criteria listed in subparagraphs (A)-(D) of this paragraph:

(A) a community located in an area in this state with a medically underserved population;

(B) a community located in an area in this state designated by the United States Secretary of Health and Human Services as an area with a shortage of personal health services;

(C) a population group designated by the United States Secretary of Health and Human Services as having a shortage of personal health services; or

(D) a community that meets criteria adopted by the board by rule, considering relevant demographic, geographic, and environmental factors.

(5) Part-time practice - At least 25 hours of patient-related practice per week at the site for which match funds are requested.

(6) Primary care - Physician services in any of the following medical specialties listed in subparagraphs (A)-(D) of this paragraph:

(A) family/general practice;

(B) general pediatrics;

(C) general internal medicine; or

(D) general obstetrics/gynecology.

(7) Start-up money - Payments made by a medically underserved community for reasonable costs incurred by a physician to establish a medical office and ancillary facilities for diagnosing and treating patients.

§501.305. Eligibility Criteria for a Contributing Community.

To be eligible to participate in this program, a contributing community must:

(1) qualify as a "medically underserved community";

(2) exist in perpetuity as a non-profit entity governed by council members, commissioners, or a board of trustees that:

(A) is responsible to and serves the community in which it is located;

(B) is legally authorized to raise funds and/or accept grants and financial gifts from citizens, scholarship funds, or private foundations;

(C) assures a commitment from the community of at least $15,000 in contributions toward the project;

(D) assures that sponsor contributions will include no federal or state funds; and

(E) assures the availability of a practice opportunity for a participating physician;

(3) apply for state matching funds available through this program; and

(4) contract with a physician who is eligible to participate in the program by providing primary care in the community for at least two years.

§500.307. Physician Eligibility Criteria.

To qualify for participation in this program, a physician must:

(1) hold a current, unrestricted license as a physician from the Texas State Board of Medical Examiners;

(2) have successfully completed a primary care residency program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association within ten years of his or her application to this program;

(3) have contracted with an eligible community (that has made a financial commitment of at least the minimum contribution level) to provide primary care in the supporting community for at least two years;

(4) have never defaulted on nor currently owe a refund on any state, federal, or local student financial aid;

(5) have authorized a credit check and background check, the results of which are satisfactory to the sponsoring community; and

(6) have never been convicted of a felony.

§500.309. Procedures to Apply for Funds.

(a) Application cycle. The Center shall publish an annual notice of availability of funds in the *Texas Register* .

(b) Issuing office. The Request for Application (RFA) shall be issued by the Center, and applicants shall request applications from the Center.

(c) Purpose. The RFA shall provide the applicant with information and forms necessary to apply for financial assistance.

(d) Application submission.

(1) The Center must receive the application by the due date specified in the RFA.

(2) Applicants must submit an original and two copies of the application to the Center.

(3) The application must be on the forms and in the format prescribed by the Center.

(4) The Center shall return late or incomplete applications with an explanation. Otherwise, all applications shall be considered for funding.

§500.311. Application Requirements.

Applications must be in the format prescribed and contain the following information listed in paragraphs (1)-(4) of this section:

(1) a description of the organization applying for state funds which at a minimum shall include:

(A) the organization's full name and address;

(B) the name, title, mailing address, physical address, and telephone number of a contact person;

(C) the organization's status as a governmental entity or nonprofit corporation (including a certified copy of the organization's nonprofit charter, if applicable);

(D) the name of the person responsible for the project;

(E) the name of the person authorized to execute contracts on behalf of the organization; and

(F) a proposed schedule of the days and hours the medical practice will operate.

(2) a community needs/resource assessment which shall include:

(A) a community profile;

(B) a demographic profile of the service area;

(C) health resources available in the community;

(D) cultural and socioeconomic status;

(E) a description of health problems;

(F) a description of the service area and service population; and

(G) a medical community profile;

(3) a comprehensive financial plan for the project which shall include:

(A) a listing of funding sources for the project other than the Center;

(B) a financial statement signed by an auditor or accounting entity; and

(C) an estimated budget for the first year of the project; and

(4) a budget for funds requested from the Center which shall include:

(A) allowable costs, which may include but are not limited to, the following:

(i) land acquisition and facility construction and/or renovation;

(ii) computer hardware and software;

(iii) lab equipment required to provide basic primary health care services;

(iv) an exam table;

(v) routine medical equipment;

(vi) a refrigerator required for drug/vaccine storage;

(vii) supplies required in a primary care physician's office;

(viii) staff salaries and fringe benefits for six months (excluding compensation for the physician); and

(ix) staff and job-related training; and

(B) non-allowable costs, which include but are not limited to, the following:

(i) lease or purchase of motor vehicles;

(ii) consulting fees or the cost of a feasibility study; and

(iii) physician compensation.

§500.313. Evaluation of Application.

(a) The Executive Committee of the Center delegates to the executive director the necessary powers, duties and functions to administer this program.

(b) The Center shall review each complete application to determine program eligibility, to prioritize community need among applicants, and to make recommendations for funding.

(c) An application which contains false information included to increase the likelihood of receiving funding shall be denied consideration for the duration of the application period.

(d) An applicant which has filed bankruptcy is not eligible.

(e) The Center may renegotiate the amount of matching funds to be awarded to any applicant.

(f) The Center may limit award amounts based on the availability of funds.

(g) The executive director of the Center may waive provisions of these rules if necessary to address unusual or exceptional community or physician eligibility issues.

§500.315. Contract Award.

(a) After review of staff recommendations, the Executive Director of the Center shall announce the projects selected for funding.

(b) Applicants will be notified in writing of the approval or denial of the application.

(c) Any applicant who is denied funds under this program may file a written request for an administrative review of the denial. The request shall be mailed to the Center within ten working days of the postmarked date of the Center's letter of denial. Upon receipt of the request, staff shall conduct an administrative review, resulting in a final decision. The Center will mail a written notice of the decision either upholding or overruling the denial to the applicant.

(d) Contract awards shall not exceed $25,000 unless the Center has determined that the application demonstrates exceptional financial need.

§500.317. Methodology for Prioritizing Neediest Communities.

The Center will prioritize the communities found eligible for participation in the program to assure that the neediest communities are provided grants. The prioritization process will quantify indicators of need (not listed in any assigned priority order) which may include, but are not limited to, the following listed in paragraphs (1)-(10) of this section:

(1) no practicing primary care physicians;

(2) with only one primary care physician and a population of at least 2,000;

(3) no federally or state-funded primary care clinic;

(4) no practicing physician assistants or nurse practitioners;

(5) the participating physician will be the only physician practicing in one of the primary care specialties;

(6) large minority population, if the participating physician is a member of the same minority group;

(7) designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years;

(8) a population-to-primary care provider ratio in the top 25% of all counties in the state;

(9) poverty rates above the state average; and

(10) median family incomes at least 25% below the state average.

§500.319. Contribution Procedures.

The Center may provide up to $25,000 in matching funds to the neediest communities as determined under §500.317 of this title (relating to Methodology for Prioritizing Neediest Communities).

§500.321. Contract.

The Center will execute a written contract with each community selected concerning use of the state matching funds allocated under this program. The contract shall provide that:

(1) the community has obtained a credit check and information concerning the participating physician's professional background from reputable sources, including the National Practitioner Data Bank or its successor;

(2) the community will retain title to or ownership of any buildings or equipment purchased with state or local matching funds disbursed under this program for seven years;

(3) the community has executed a contract with an eligible physician containing at least the following provisions:

(A) the physician shall engage in clinical practice in the supporting community for at least two years following disbursement of the state funds;

(B) during the two-year service obligation, the physician shall not discriminate among patients seeking care based on their ability to pay or whether payment will be made though Medicaid or Medicare;

(C) the physician shall complete and submit provider enrollment applications for Medicare and the Texas Medicaid program, and shall accept Medicare assignment if enrolled; and

(D) the physician shall set his or her charges at the prevailing rate for the area and shall utilize a sliding fee scale based on the client's ability to pay;

(4) the community shall make reasonable efforts to locate the physician's practice at a site readily accessible to a majority of area residents;

(5) the community shall make a good faith effort to contract with a physician whose practice specialty is appropriate to serve the primary health care needs of area residents;

(6) the community shall attempt in good faith to replace a participating physician as quickly as possible after the physician fails to fulfill his or her two-year practice obligation, but the community may seek a replacement physician for no more than six months.

§500.323. Funding Allocation Procedure.

A state warrant for the prescribed disbursement will be released to an appropriate community representative.

§500.325. Breach of Contract.

(a) Binding contract. A contract executed under these sections, listed in Subparagraph F of this chapter (relating to Executive Committee for the Center for Rural Health Initiatives) between the Center and the supporting community is a binding contract.

(b) A supporting community shall notify the Center in writing within two weeks of any change in its status or that of the participating physician.

(c) The Center may find that the supporting community has breached the contract if the supporting community fails to:

(1) provide the full amount of funding specified in the contract; or

(2) fulfill any other conditions specified in the contract.

(d) If the Center finds that the supporting community has breached the contract, the Center may require the following listed in paragraphs (1)-(4) of this subsection:

(1) forfeiture of all claim to funds and/or property acquired through use of the state matching funds disbursed through this program;

(2) cancellation of the physician's obligation of service in the supporting community;

(3) reimbursement by the supporting community to the Center of state matching funds; and

(4) forfeiture of the opportunity to participate in the program in the future.

§500.327. Reporting and Monitoring.

(a) The supporting community shall provide quarterly progress reports to the Center regarding the expenditure of funds related to this program to cover physician practice start-up costs.

(b) The supporting community shall provide periodic progress reports to the center regarding patient outcomes as a result of accessing this program, as outlined in the program guidelines.

(c) The supporting community shall monitor the participating physician's practice during the period of obligated service and shall provide quarterly reports including status reports on the physician's compliance with the requirements specified in §500.321 of this title (relating to Contract) to the Center.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716386
Laura Jordan
Executive Director
Center for Rural Health Initiatives
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 479-8891

♦ ♦ ♦

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.414

The Texas Department of Insurance proposes an amendment to §1.414, concerning assessment of maintenance taxes and fees for payment in 1998. The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 1998 on the basis of gross premium receipts for calendar year 1997 or on some other designated basis. Section 1.414 set rates of assessment and applies those rates to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts.

The department will consider the adoption of the amendment to §1.414 in a public hearing under Docket Number 2321, scheduled for 10:00 a.m. on January 8, 1998, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the proposed section is in effect, the anticipated fiscal impact on state government is estimated income of $40,491,094 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed amended section, and there will be no effect on local employment or local economy.

Mr. Fuchs has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments. The cost in 1998 to an insurer receiving premiums in 1997 for motor vehicle insurance will be .056 of 1% of those gross premiums; for casualty insurance, fidelity, guaranty and surety bonds, .197 of 1% of those gross premiums; for fire insurance and allied lines, including inland marine, .370 of 1% of those gross premiums; for workers' compensation insurance, .085 of 1% of those gross premiums; and for title insurance, .174 of 1% of those gross premiums. The cost in 1998 for an insurer receiving premiums in 1997 for life, health, and accident insurance, will be .040 of 1% of those gross premiums. In 1998, a health maintenance organizations will pay $.41 per enrollee if it is a single service health maintenance organization, $1.21 per enrollee if it is a multi-service health maintenance organization, and $.41 per enrollee if it is a limited service health maintenance organization. In 1998, a third part administrator will pay .313 of 1% of its correctly reported gross amount of administrative or service fees received in 1997. In 1998, a corporation issuing prepaid legal service contracts, the cost will be 1.0% of correctly reported gross revenues for 1997. There will be no difference in rates of assessment between small and large businesses. The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The actual amount of time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 23.08A, 1.03A, and Article 20A.33 (the Texas Health Maintenance Organization Act), which provide authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the

lines of insurance and related activities specified in amended §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 21.07-6 § 21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. The Texas Health Maintenance Organization Act, Section 33 (codified at the Insurance Code, article 20A.33), establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 21.46, 21.54, and 23.08A, and the Texas Health Maintenance Organization Act, §33, (codified at article 20A.33).

§1.414. Assessment of Maintenance Taxes and Fees, 1998 [~~1997~~].

(a) The following rates for maintenance taxes and fees are assessed on gross premiums of insurers for calendar year 1997 [~~1996~~] for the lines of insurance specified in paragraphs (1) - (5) of this subsection:

(1) for motor vehicle insurance, pursuant to the Insurance Code, Article 5.12, the rate is .056 [~~.066~~] of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code, Article 5.24, the rate is .197 [~~.251~~] of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code, Article 5.49, the rate is .370 [~~.418~~] of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code, Article 5.68, the rate is .085 [~~.096~~] of 1.0%;

(5) for title insurance, pursuant to the Insurance Code, Article 9.46, the rate is .174 [~~.135~~] of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 1997 [~~1996~~] for life, health, and accident insurance, pursuant to the Insurance Code, Article 4.17, is .040 of 1.0%.

(c) Rates for maintenance taxes are assessed for calendar year 1997 [~~1996~~] for the following entities:

(1) pursuant to the Texas Health Maintenance Organization Act, §33 (codified at the Insurance Code, Article 20A.33), the rate is $.41 [~~$.27~~] per enrollee for single service health maintenance organizations, and $1.21. [~~$.80~~] per enrollee for multi-service health maintenance organizations and $.41 per enrollee for limited service health maintenance organizations ;

(2) pursuant to the Insurance Code, Article 21.07-6, §21, the rate is .313 [~~.339~~] of 1.0% of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code, Article 23.08, the rate is 1.0 % of correctly reported gross revenues for corporations issuing prepaid legal service contracts.

(d) The taxes assessed under subsections (a), (b), and (c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, TX 78774-0100 on March 1, 1998 [~~1997~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716458
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–6327

♦ ♦ ♦

28 TAC §1.415

The Texas Department of Insurance proposes an amendment to §1.415, concerning assessment of a maintenance tax surcharge which will be used to service the bonded indebtedness of the Texas Workers' Compensation Insurance Fund. The amendment is proposed to change the rate of assessment for taxes due in 1998 on the basis of gross premium receipts for calendar year 1997. The Texas Workers' Compensation Commission annually establishes and certifies to the comptroller of public accounts the rate of assessment for the maintenance taxes which are authorized to pay the cost of administering the Texas Workers' Compensation Act. The commissioner of insurance may increase the Texas Workers' Compensation Commission tax rate to a rate sufficient to pay all debt service on the bonds issued on behalf of the Texas Workers' Compensation Insurance Fund, subject to the maximum rate established by the Texas Labor Code, §404.003. The proposed section amends the rate of assessment which applies to workers' compensation insurance companies. Timely and accurate payment of maintenance taxes is necessary for support of regulatory functions.

The department will consider the adoption of the amendment to §1.415 in a public hearing under Docket Number 2322, scheduled for 9:00 a.m. on December 17, 1997, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the proposed section is in effect, the anticipated fiscal impact on state government is estimated income of $20,532,066 generated from the maintenance tax surcharge which will be used to pay debt service for $300 million in bonds issued in 1991 by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Insurance Fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Mr. Fuchs also has determined that for each year of the first five years the amended section is in effect, the public benefit

anticipated as a result of enforcing the section will be the facilitation in the collection of a maintenance tax surcharge assessment for the Texas Workers' Compensation Insurance Fund. The amount of the surcharge is determined each year by the department. The cost in 1998 will be .763% of an insurer's correctly reported gross workers' compensation insurance premiums for the calendar year 1997. There will be no difference in rates of assessment between small and large businesses. The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 5.76-3, 5.76-5, 5.68 and 1.03A and the Texas Labor Code, §403.002. The Insurance Code, Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.76-5 establishes the maintenance tax surcharge. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the Department as authorized by statute. The Texas Labor Code, §403.002 establishes the maintenance tax for workers' compensation insurance companies.

The following Texas statutes are affected by this rule: Insurance Code, Articles 5.12, 5.55C, 5.68, 5.76-3, 5.76-5, 21.46, and 21.54 and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09.

§1.415. Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1998 [~~1997~~].

(a) The maintenance tax surcharge is levied against each insurance carrier writing workers' compensation insurance in this state, at the rate of .763% [~~.85%~~] of the correctly reported gross workers' compensation insurance premiums for the calendar year 1997 [~~1996~~] to cover debt service for bonds issued on behalf of the Texas Workers' Compensation Insurance Fund.

(b) The maintenance tax surcharge shall be payable and due to the Comptroller of Public Accounts, Austin, Texas 78774-0100 on March 1, 1998 [~~1997~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716460
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 3. Life, Health and Accident Insurance and Annuities

Subchapter MM. Assessment

28 TAC §3.13001

The Texas Department of Insurance proposes new §3.13001, concerning the assessment of insurers that provide health insurance in this state. Insurance Code, Article 3.77, §8 directs that the commissioner of insurance by rule shall provide the procedures, criteria and forms necessary to implement, collect and deposit assessments made and collected under Insurance Code, Article 3.77. The new section provides definitions, procedures, criteria and forms for the making and collecting of assessments by the Texas Health Insurance Risk Pool.

The department will consider the adoption of new §3.13001 in a public hearing under Docket Number 2319, scheduled for 10:00 a.m. on January 8, 1998, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Mr. Jose Montemayor, Associate Commissioner for the financial program, has determined that for the first five-year period the proposed new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section, and there will be no effect on local employment or local economy.

Mr. Montemayor has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of assessments made by the Texas Health Insurance Risk Pool.

The new section is required by HB 710, 75th Legislature, which amended Insurance Code, Article 3.77 by adding section 8 to the article. The new section 8 provides, in part, that the commissioner by rule shall provide the procedures, criteria and forms necessary for the Texas Health Insurance Risk Pool (Pool) to implement, collect and deposit assessments made and collected pursuant to Insurance Code, Article 3.77. Under Article 3.77, the Board of Directors of the Pool is required to determine and make assessments on insurers that collect health insurance premiums in this state for the purpose of funding operational, administrative and actual losses of the Pool. The proposed section will require the Board to produce forms for the purpose of gathering the information necessary to determine the amount of an assessment on each insurer subject to assessment and making the assessment. The cost to the Board of compliance with this requirement is estimated at a maximum of $5,000 but could be significantly less depending upon the printing option selected by the Board. This expense will be incurred during the first year the section is in effect and is not expected to recur, except for the expense of reprinting additional forms from time to time.

Each insurer that collects premiums for health insurance in this state will be affected by the section. Under the section the Board will request from these insurers the amount of health in-

surance premiums (as defined in the section) collected in this state, except for Medicare supplement premiums subject to Insurance Code, Article 3.74 and small group health insurance premiums subject to Insurance Code, Articles 26.01 through 26.76, which are exempted from the assessable health insurance premiums by Insurance Code, Article 3.77. The cost of compliance for each insurer collecting health insurance premiums will be the labor cost involved in extracting the data on health insurance premiums from its records in response to a request from the Board for data on its health insurance premiums. The actual cost for each insurer will vary depending on an insurer's record keeping methods, the health insurance coverages for which premiums are collected and the volume of those premiums. Based on the department's experience, most insurers will be able to use existing records to identify assessable premiums, which can then be reported on the form. If an insurer's records do not identify health insurance coverages in such a way that separates out Medicare supplement and small group health insurance premiums, then such insurers will have to research their records to identify these premiums. In the latter situation, the time expended on identifying the data will also be affected by the amount of the health insurance premiums collected. Some of these insurers may choose to amend their record keeping methods to identify these health insurance premiums on a regular basis, while others may consider it cost-effective to perform research on their records, as requests for the information are made by the Board. For small and large businesses alike, the department has determined the cost of compliance will be the same on a per hour of labor basis, based upon the assumption that an insurer will utilize an employee who is familiar with the accounting records of the insurer and accounting practices in general.. Such employees are compensated from $17-$30 an hour based on the department's experience. The actual dollar amount of the cost to an insurer will vary depending on an insurer's record keeping methods, the volume of premiums collected, the different kinds of health insurance issued and whether it chooses to revise its record keeping methods to make it less expensive to retrieve the information on health insurance premiums. For insurers with records that identify the health insurance premiums by type of coverage, the department estimates the maximum cost to complete the form for a single request for information by the largest insurer or a small insurer to be $240.

In addition to the cost of compliance for a request for information on health insurance premiums collected by the Pool, the Board will assess each such insurer under Article 3.77, Section 13, for the operating expenses, administrative expenses and actual losses of the Pool, in an amount equal to the ratio of each insurer's assessable health insurance premiums to the total of such premium collected by all insurers. Thus, the impact of the assessment is based upon the proportionate amount of each insurer's nonexempt health insurance premium, a cost that will vary as between large and small insurance businesses. Insurers collected health insurance premiums in Texas in 1996 of approximately $12.7 billion according to the department's records. The largest insurer collected approximately $1.6 billion while approximately 500 small insurers with total premium volume for all insurance of less than $1 million collected $15.8 million of health insurance premiums. Because the department's records, drawn from total health insurance premiums reported on the annual statement, include all health insurance coverages, these figures are higher than the actual amount of assessable health insurance premiums. Under Article 3.77, the maximum financial impact of an assessment on an affected person in one year is one-half of one percent of the insurer's annual collected premiums for health insurance in the State of Texas, less any health insurance premium exempted from assessment. While this statutory limit expires January 1, 2000, it is not anticipated that assessments will exceed this level in any year of the first five year period.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director of Financial Monitoring, Mail Code #303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099.

The new section is proposed under the Insurance Code, Articles 3.77 and 1.03A. Article 3.77, §8 provides authorization for the Commissioner of Insurance to adopt rules to provide the procedures, criteria and forms necessary to implement, collect, and deposit assessments made and collected under the Insurance Code, Article 3.77, §13. Article 1.03A provides that the commissioner of insurance may adopt rules and regulations for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

Insurance Code, Article 3.77 is affected by this proposal.

§3.13001. Assessments.

(a) Definitions. Words and terms used in this section that are defined in Insurance Code, Article 3.77, have the same meanings as defined therein. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Health insurance premiums - any consideration collected by an insurer for individual or group medical or health care services for residents of the State of Texas whether by insurance or otherwise, or received by a health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise.

(A) The term includes, but is not limited to the coverages described in clauses (i) - (iv) of this paragraph:

(i) individual or group medical or health care services;

(ii) Stop-loss or excess loss insurance for physicians, health care providers, hospitals, or for any benefit arrangements to the extent permitted by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S. C. Section 1002);

(iii) Hospital, medical or surgical expense incurred coverages or any combination of coverages; or

(iv) Health coverage provided through a multiple employer welfare arrangement, except for any amount for stop loss or excess loss insurance.

(B) The term does not include the coverages described in (i) - (x) of this paragraph:

(i) short term limited duration coverage;

(ii) coverage only for accident (including accidental death and dismemberment;

(iii) disability income insurance;

(iv) dental only or vision only benefits that are limited in scope to a narrow range or type of benefits and that are generally excluded from policies that combine hospital medical or surgical benefits;

(v) credit insurance;

(vi) coverage only for a specified disease or illness (for example, cancer policies), or hospital indemnity or other fixed indemnity insurance (for example "Hospital Confinement Indemnity Coverage" as defined in §3.3073 of this title (relating to Minimum Standards for Hospital Confinement Indemnity Coverage) provided that:

(l) there is no coordination between the provision of benefits and benefits provided under any other policy; and

(ll) benefits are paid with respect to a covered event regardless of whether benefits are provided with respect to the same event under any policy.

(vii) coverage issued as a supplement to liability insurance;

(viii) insurance arising out of workers' compensation or similar law;

(ix) automobile medical-payment insurance and personal injury protection; or

(x) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self insurance.

(2) Insurer - any entity that provides health insurance in this state, including stop-loss or excess loss insurance. The term includes, but is not limited to, an insurance company; a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Insurance Code); an approved nonprofit health corporation; a fraternal benefit society; a stipulated premium insurance company; a group hospital service corporation subject to Chapter 20, Insurance Code; a multiple employer welfare arrangement subject to Insurance Code, Article 3.95-1 et seq., a surplus lines carrier; an insurer providing stop-loss or excess loss insurance to physicians, health care providers, hospitals, or to any benefit arrangements to the extent permitted by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002).

(3) Interim assessment - an assessment made for the purpose of funding anticipated shortfall of revenues to cover organizational and interim operating expenses, including claims, of the pool.

(4) Regular assessment - an assessment made for the purpose of recouping any net losses of the pool during the previous calendar year.

(b) Procedures.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the pool, the board shall determine interim and regular assessments, at such times and for such amounts as the board finds necessary.

(2) Interim and regular assessments may be considered at any meeting of the board and must be approved by the board in accordance with the plan of operation.

(c) Criteria.

(1) Computation of the funds necessary to carry out the powers and duties of the pool shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(2) Regular assessments shall cover the net losses of the pool, including administrative expenses and incurred losses, for the preceding calendar year as determined by the board and reported in the annual statement of the pool filed with the commissioner. Any interim assessments made in a fiscal year shall be credited as offsets against the regular assessment for that fiscal year.

(3) Interim assessments shall cover projected cash requirements of the pool, as determined by the board, after taking into account operating and investment activity and expected and incurred claims which may exceed collected premiums.

(4) The board shall determine the health insurance premiums of all insurers and each insurer in the state from information provided by the insurers, subject to verification as provided in paragraph (5) of this subsection. If an insurer fails to timely respond to a request for information, the board shall presume that the unresponsive insurer has no health insurance premiums exempt from assessment and the amount reflected in the Schedule T of the annual statement for the preceding year for accident, health insurance premium including policy, membership and other fees shall be used in determining its assessment. In the event the entity does not file on schedule T, or does not file schedule T for all affected premiums, the board shall use the most comparable available information.

(5) The board may audit from time to time the information provided by insurers under paragraph (4) of this subsection.

(6) The board shall determine the due date for payment of the assessment, which shall not be less than the 30th day after the date on which the notice of the assessment is mailed to the insurers. Interest shall accrue on any unpaid amount at a rate determined by the board, beginning on the due date.

(7) The total amount of all assessments on an insurer in a calendar year shall not exceed one-half of one percent of the insurer's health insurance premiums for that year. The limitation in this paragraph does not apply on or after January 1, 2000.

(d) Forms.

(1) The board shall adopt a form for the invoicing of each insurer's portion of any assessment. The form shall include:

(A) The health insurance premiums for all insurers for the preceding calendar year;

(B) The health insurance premiums for the individual insurer for the preceding calendar year;

(C) The amount of total assessment and whether the assessment is a regular assessment or interim assessment;

(D) If a regular assessment, the amount of any interim assessment credited toward that regular assessment;

(E) The amount of the assessment for the insurer; and

(F) The payment due date for the assessment and the interest rate which will apply to any delinquent payment.

(2) The board shall adopt a form for requesting the data necessary to determine the amount of assessments.

(e) Enforcement.

(1) Any insurer whose certificate of authority to do business in this state is canceled or surrendered shall be liable for

any unpaid assessments for all assessable premiums written through the date of such cancellation or surrender.

(2) An insurer may petition the commissioner for an abatement or deferment of all or part of an assessment imposed by the board. The commissioner may abate or defer, in whole or in part, such assessment if the commissioner determines that the payment of the assessment would endanger the ability of the participating insurer to fulfill its contractual obligations. If an assessment against an insurer is abated or deferred in whole or in part, the amount of such assessment abated or deferred shall be assessed against the other insurers in a manner consistent with the basis for assessments set forth in Insurance Code, Article 3.77, §13(e).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716465
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 7. Corporate and Financial Regulation

Subchapter J. Examination Expenses and Assessments

28 TAC §7.1012

The Texas Department of Insurance proposes an amendment to §7.1012 concerning assessments to cover the expenses of examining insurance companies. Assessments will be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 1997 calendar year, and from each foreign insurance company examined during the 1998 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed amended section will be in addition to, and not in lieu of any other charge which may be made under law, including the Insurance Code, Article 1.16.

The department will consider the adoption of the amendment to §7.1012 in a public hearing under Docket Number 2320, scheduled for 10:00 a.m. on January 8, 1998, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $8,681,786 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Mr. Fuchs has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the adoption of assessment rates to defray the expenses of examinations and administration of the laws related to examinations during the 1998 calendar year. Mr. Fuchs has determined that the direct economic cost to individuals who are required to comply with the proposed section will vary. In the case of domestic companies, the amount of the assessment in 1998 will be .00385 of 1.0% of the domestic company's admitted assets (excluding pension assets specified in subsection (b)(2)(A) of the section and .00814 of 1.0% of a domestic company's gross premium receipts for 1997 (excluding pension related premiums specified in subsection (b)(2)(B) of this section and premiums related to welfare benefits described in subsection (b)(3) of this section). In the case of foreign companies examined in 1998, the amount of the assessment in 1998 will be 32% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. There will be no difference in rates of assessments between small and large businesses, except that a minimum charge of $25 is assessed domestic companies in §7.1012(b)(3). The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 1.16 and 1.03A. The Insurance Code, Article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code, Articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 1.16, 1.17, 1.17A, 1.18, 1.19, 1.28, 4.10 and 4.11.

§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 1998 [~~1997~~]

(a) Foreign insurance companies examined during the 1998 [~~1997~~] calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code, Article 1.16. Each foreign insurance company examined shall pay 32% of the gross salary paid to each examiner for each month or partial month of the examination in order to

cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code, Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 1998 [~~1997~~]. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00385 [~~.00494~~] of 1.0% of the admitted assets of the company as of December 31, 1997 [~~1996~~], upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .00814 [~~.01095~~] of 1.0% of the gross premium receipts of the company for the year 1997 [~~1996~~], upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 181(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a $25 total, a minimum overhead assessment of $25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, of the federal Social Security Act (42 United States §301 et seq.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716463
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 29, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 25. Insurance Premium Finance

Subchapter E. Examinations and Annual Reports

28 TAC §25.88

The Texas Department of Insurance proposes an amendment to §25.88 concerning an assessment which will be used to cover the general administrative expense assessment of insurance premium finance companies. The amendment is necessary to adjust the rate of assessment which is sufficient to meet the expenses of performing the department's statutory responsibilities for examining, investigation, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the 1998 fiscal year's general administrative expense and will collect from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1997 calendar year.

The department will consider the adoption of the amendment to §25.88 in a public hearing under Docket Number 2323, scheduled for 9:00 a.m. on December 17, 1997, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the proposed section will be in effect, the anticipated fiscal impact on state government will be income estimated at $303,524 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the proposed amended section.

Mr. Fuchs has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of an assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. The cost of the assessment to a premium finance company in 1998 will be .01806 of 1.0% of the 1997 total loan dollar volume of the premium finance company. The minimum cost for compliance based on assessment under the section is $250.00. There will be no difference in rates of assessment between small and large businesses. The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section.

Comments on the proposal to be considered by the commissioner must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 24.06(c), 24.09, and 1.03A. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect cost of examinations and investi-

gations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department.

The following articles of the Insurance Code are affected by this section: Articles 24.05, 24.06, 24.08, 24.09, and 24.10.

§25.88. General Administrative Expense Assessment.

On or before April 1, 1998 [~~1997~~], each insurance premium finance company holding a license issued by the department under the Insurance Code, Chapter 24, shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be sent to the Texas Department of Insurance, Examinations Division, Mail Code #305-2E, 333 Guadalupe , P. O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as .01806 [~~.01977~~] of 1.0% of the total loan dollar volume of the company for the calendar year 1997 [~~1996~~].

(2) If the amount of the assessment computed under paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716462

Lynda Nesenholtz

Assistant General Counsel

Texas Department of Insurance

Earliest possible date of adoption: January 20, 1998

For further information, please call: (512) 463–6327

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 106. Exemptions From Permitting

Subchapter A. General Requirements

30 TAC §106.4

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §106.4, concerning Requirements for Exemption from Permitting.

EXPLANATION OF THE PROPOSED RULE. The Federal Clean Air Act (FCAA), §182(b)(1) and (f) specifies that required measures for volatile organic compounds (VOCs) (including reasonably available control technology (RACT) and nonattainment new source review (NNSR)) must also be applied for nitrogen oxides (NO_x), unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The FCAA, §182(f) allows the following federally required NO_x measures to be waived if the state demonstrates that NO_x reductions do not contribute to ozone attainment: RACT, NNSR, vehicle inspection/maintenance, and general and transportation conformity. On April 12, 1995, the United States Environmental Protection Agency (EPA) approved a temporary §182(f) exemption from these NO_x measures in Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA). EPA's approval was based on the state's preliminary demonstration, using Urban Airshed Model (UAM) modeling, that NO_x reductions in HGA and BPA would not lower ozone levels, and in fact could make them worse ("NO_x disbenefit"). The temporary exemption allowed more time to conduct UAM modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results were judged critical in determining whether, and to what extent, NO_x reductions are needed to attain the ozone standard. The EPA specified that the temporary exemption would expire on December 31, 1996. On May 23, 1997, the EPA approved a one-year extension of the §182(f) temporary exemption, which now expires on December 31, 1997. This additional year allows the UAM modeling, using COAST data, to accommodate improvements in the modeling process, and to allow the development of better substantiated control programs.

As a result of the original exemption and extension, the agency revised certain rules, including §106.4, to be consistent with the §182(f) waiver. In the Fall of 1997, the TNRCC staff completed a major modeling analysis of the airshed of the upper Texas Gulf Coast. This study indicated that NO_x reductions are a necessary step toward the area's attaining the federal air quality standard for ozone. Because of the modeling and the need to continue steady reductions of the pollutants that contribute to ozone smog, on November 24, 1997, the commission determined not to seek further federal §182(f) waivers from the NO_x reduction requirements of the 1990 FCAA for the HGA and BPA areas.

This amendment to Chapter 106, regarding Exemptions from Permitting, would require a source seeking standard exemption to instead undergo full NNSR if the project constitutes a new major source or major modification for NO_x. These NNSR requirements will be reflected, as applicable, in all permits issued after the §182(f) exemption expires on December 31, 1997.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the section is in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of full NO_x NNSR.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the section is in effect, the anticipated public benefit will be reductions of NO_x, ozone, and other air pollutants. This rulemaking would affect new major stationary sources of NO_x or major modifications in the HGA and BPA areas. The commission cannot estimate the cost per facility for compliance with the amendment due to wide variability of project costs. The related amendments to Chapter 116 being proposed concurrently with this rulemaking would add flexibility by allowing certain NNSR projects to substitute less costly best available control technology for lowest achievable emission rate.

DRAFT REGULATORY IMPACT ANALYSIS. The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not

subject to §2001.0225 because, while meeting the definition of a "major environmental rule" as defined in the Code, it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this proposed section under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this amendment is to remove an existing waiver for NO_x NNSR. If adopted, some new or modified sources located in in the HGA and BPA ozone nonattainment areas will no longer qualify for an exemption and instead be subject to a review of their NO_x emissions and possibly new control measures. However, there is no restriction or taking of private real property associated with this proposed amendment.

COASTAL MANAGEMENT PLAN. The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. Adoption of the proposed amendment should result in reductions of ambient NO_x and ozone concentrations.

PUBLIC HEARING. A public hearing on this proposal will be held January 20, 1998, at 10:00 a.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97182-116-AI. Comments must be received by 5:00 p.m., January 20, 1998. For further information or questions concerning this proposal, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.012, 382.051, 382.054, and 382.057, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.012.

§106.4. Requirements for Exemption from Permitting.

(a) To qualify for an exemption, the following general requirements must be met.

(1) (No change.)

(2) Any [~~Except as noted in paragraph (3) of this subsection, any~~] facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for an exemption under this chapter. Persons claiming an exemption under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) to ensure that any applicable netting requirements have been satisfied.

[~~(3) Any facility or group of facilities, which constitute a stationary source, as defined in §116.12 of this title, that emits NO_x and is located in the Houston/Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the Beaumont/Port Arthur ozone nonattainment area (Hardin, Jefferson, and Orange Counties) can exceed the major source/major modification level listed in Table 1 of §116.12 of this title (relating to Nonattainment Review Definitions) if the following conditions are met.~~]

[~~(A) Any new facility or group of facilities, which constitute a new stationary source, as defined in §116.12 of this title, and emit NO_x in an amount, after netting, exceeding the major source threshold or major modifications exceeding the major modification level for NO_x listed in Table 1, shall register by submitting a Form PI-8.~~]

[~~(B) The registration shall be submitted prior to commencement of construction, but not later than December 31, 1997.~~]

[~~(C) No other applicable limits contained in this section shall be exceeded.~~]

(3) [~~(4)~~] Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for an exemption under this chapter.

(4) [~~(5)~~] Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO_2 or PM_{10}; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(5) [~~(6)~~] Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific exemption in this chapter must meet the revised requirements to qualify for an exemption.

(6) [~~(7)~~] A proposed facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(7) [~~(8)~~] There are no permits under the same Texas Natural Resource Conservation Commission account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

(b)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716445
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 239–1966

♦ ♦ ♦

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

The commission proposes amendments to §115.10, concerning Definitions; new §115.420 and amendments to §§115.421-115.423, 115.426, 115.427, and 115.429, concerning Surface Coating Processes. The commission proposes these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC) and to the State Implementation Plan (SIP) in order to add wood furniture coating rules and shipbuilding/ship repair coating rules which are based upon two Control Techniques Guideline (CTG) guidance documents issued by the United States Environmental Protection Agency (EPA).

EXPLANATION OF PROPOSED RULES Under §183 of the 1990 Amendments to the Federal Clean Air Act (FCAA), the EPA is required to issue CTGs for the purpose of assisting states in developing reasonably available control technology (RACT) controls for sources of VOC emissions. In turn, each state is required to submit a revision to its SIP which implements RACT for VOC sources in moderate or above ozone nonattainment areas. Specifically, FCAA §182(b)(2) requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990 (the enactment date of the 1990 FCAA), but prior to the time of attainment. FCAA §183(b)(4) requires EPA to issue a CTG concerning emissions of VOC and particulate matter from coatings and solvents used at new and existing shipbuilding and ship repair facilities. However, unlike the more general CTG requirements which mandate that EPA establish a RACT level of control, §183(b)(4) instead requires the EPA to develop the shipbuilding and ship repair CTG based on best available control measures (BACM). BACM is a broadly defined term referring to "best" technologies and other "best" available measures that can be used to control pollution. Limits in state rules must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT (and in the case of shipbuilding/ship repair, BACM).

EPA issued a final wood furniture manufacturing CTG (61 Federal Register (FR) 25223, May 20, 1996), although this CTG did not establish adoption and implementation dates. Later, the EPA published a schedule for states to adopt and implement RACT rules based on the CTG (61 FR 50823, September 27, 1996). Consequently, adoption of RACT rules for this CTG source category is now required for VOC sources in ozone nonattainment areas. The wood furniture manufacturing CTG states (on page 5-3) that "RACT requirements apply to all sources located in nonattainment areas (other than extreme areas) that emit or have the potential to emit 25 tons/yr or more of VOCs." Similarly, the EPA issued a final shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996), and adoption of RACT rules for this CTG source category is now required for major VOC sources in ozone nonattainment areas.

Under FCAA §182(b)(2)(C), (c), and (d), the state must also implement RACT for all major stationary VOC sources located in moderate, serious, and severe ozone nonattainment areas that are not covered by any EPA CTG document. EPA did not include offshore oil or gas drilling platforms in the shipbuilding/ship repair CTG, despite the fact that marine vessels and offshore oil or gas drilling platforms are subject to the same corrosive sea water environment. Therefore, offshore oil or gas drilling platforms which are coated at shipbuilding/ship repair facilities will be subject to the surface coating requirements for shipbuilding/ship repair operations to ensure that this federal requirement for major source RACT is satisfied. Offshore oil or gas drilling platforms which are coated elsewhere will not be subject to the surface coating requirements for shipbuilding/ship repair operations.

It should be noted that the EPA's recommendations in the wood furniture and shipbuilding/ship repair CTGs are the result of a cooperative effort involving major stakeholders. Participants throughout the CTG development included representatives from industry (including small businesses), the Navy, the coatings industry, environmental groups, states, and local agencies. Also, the CTGs were developed concurrently with the maximum achievable control technology (MACT) air toxics standards for wood furniture manufacturing operations (60 FR 62930, December 7, 1995) and for shipbuilding and ship repair surface coating (60 FR 64330, December 15, 1995). Finally, the exemption levels for the proposed wood furniture and shipbuilding/ship repair coating rules may need to be lowered in the future in order to generate additional VOC emission reductions needed to maintain progress toward attaining the national ambient air quality standard for ozone.

The proposed revisions to §115.10, concerning Definitions, delete the definitions of architectural coating, automotive basecoat/clearcoat system, automotive precoat, automotive pretreatment, automotive primer or primer surfacers, automotive sealers, automotive specialty coatings, automotive three-stage system, automotive wipe-down solutions, clear coat, clear sealers, coating, coating application system, coating line, drum, extreme performance coating, final repair coat, high-bake coatings, high-volume low-pressure spray guns, low-bake coatings, non-flat architectural coating, opaque ground coats and enamels, pail, pounds of VOC per gallon of coating (minus water and exempt solvents), pounds of

VOC per gallon of solids, semitransparent spray stains and toners, semitransparent wiping and glazing stains, shellacs, surface coating processes (which includes definitions for large appliance coating, metal furniture coating, coil coating, paper coating, fabric coating, vinyl coating, can coating, automobile coating, light-duty truck coating, miscellaneous metal parts and products coating, factory surface coating of flat wood paneling, mirror backing coating, and wood parts and products coating), topcoat, transfer efficiency, varnishes, vehicle refinishing (body shops), and wash coat. These definitions are being relocated to the proposed new §115.420, concerning Surface Coating Definitions, without changes, except that the semantics in the second sentence in the definition of coating application system have been clarified; the definition of automotive pretreatment has been revised to clarify that adhesion refers to adhesion of subsequent coatings; and the references to other paragraphs in the definition of miscellaneous metal parts and products coating have been updated due to the relocation to §115.420. In addition, the proposed revisions to §115.10 delete the definition of VOC because this term is already defined in §101.1, concerning Definitions. This deletion will also facilitate future revisions to the corresponding definition of VOC in §101.1, concerning Definitions. The proposed new §115.420 includes all definitions used exclusively within the Chapter 115 surface coating rules and organizes them according to the type of surface coating process.

The proposed new §115.420 also adds definitions of adhesive, aerospace vehicle or component, air flask specialty coating, antenna specialty coating, antifoulant specialty coating, basecoat, batch, bitumens, bituminous resin coating, cleaning operations, clear coat (as used in miscellaneous metal parts and products coating), coating solids (or solids), continuous coater, conventional air spray, epoxy, finishing application station, finishing material, finishing operation, general use coating, heat resistant specialty coating, high-gloss specialty coating, high-temperature specialty coating, inorganic zinc (high-build) specialty coating, maximum allowable thinning ratio, military exterior specialty coating, mist specialty coating, navigational aids specialty coating, nonskid specialty coating, nonvolatiles (or volume solids), normally closed container, nuclear specialty coating, organic solvent, organic zinc specialty coating, pleasure craft, pretreatment wash primer specialty coating, repair and maintenance of thermoplastic coating of commercial vessels (specialty coating), rubber camouflage specialty coating, sealant for thermal spray aluminum, sealer, ship, shipbuilding and ship repair operations, special marking specialty coating, specialty interior coating, stain, strippable booth coating, tack coat specialty coating, topcoat, touch-up and repair, undersea weapons systems specialty coating, washcoat, washoff operations, weld-through preconstruction primer (specialty coating), wood furniture, wood furniture component, and wood furniture manufacturing operations. The proposed definition of aerospace vehicle or component is simply a placeholder for the definitions included in the forthcoming aerospace CTG, such that when the EPA finalizes this CTG, no renumbering of other definitions in §115.420 will be necessary. Clear coat, as this term is used in miscellaneous metal parts and products coating, is not currently defined. The proposed definition of clearcoat is consistent with a June 1, 1995, regulation interpretation concerning this term. The remaining new definitions are used in proposed rules which are based upon CTGs for wood furniture manufacturing and shipbuilding/ship repair.

The proposed changes to §115.421, concerning Emission Specifications, establish emission limits for various coatings used in wood furniture manufacturing operations and shipbuilding/ship repair operations (including offshore oil or gas platforms); establish optional emission limit averaging equations for wood furniture manufacturing operations; establish equations for determining the maximum allowable amount of thinner which may be added to marine coatings; delete references to §115.10 for terms which are being relocated to §115.420; and change the term "applied" to "delivered to the application system" for consistency with the various emission limits in §115.421.

The proposed changes to §115.422, concerning Control Requirements, establish emission limitations and procedures for cleaning operations at wood furniture manufacturing operations and shipbuilding/ship repair operations; and restrict the use of conventional air atomization spray guns at wood furniture manufacturing operations to specific circumstances.

The proposed changes to §115.423, concerning Alternate Control Requirements, correct several references from "this section" to "this undesignated head."

The proposed changes to §115.426, concerning Recordkeeping Requirements, update a reference to a rule which has been renumbered; establish an alternate recordkeeping procedure for wood parts/products coating operations which have VOC emissions less than 25 tons per year; and clarify that temperature monitoring of direct-flame incinerators is to be done immediately downstream of the firebox, such that the firebox temperature is measured rather than the somewhat cooler stack temperature.

The proposed changes to §115.427, concerning Exemptions, update the terminology in the existing miscellaneous metal parts/products exemption from "fully assembled marine vessels and fixed offshore structures" to "ships and offshore oil or gas drilling platforms" for consistency with the proposed new requirements for surface coating of ships and offshore oil or gas drilling platforms. The proposed changes to §115.427 also exempt shipbuilding/ship repair operations in the Beaumont/Port Arthur and Houston/Galveston ozone nonattainment areas with VOC emissions from ship and offshore oil or gas drilling platform surface coating operations of less than 100 tons per year and 25 tons per year, respectively.

In addition, the proposed changes to §115.427 exempt wood furniture manufacturing facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas with VOC emissions less than 25 tons per year from the new wood furniture emission specifications and control requirements. Because wood furniture manufacturing facilities in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas with VOC emissions of at least 25 tons per year are already subject to the wood parts/products emission limits of §115.421(a)(13), the revisions to §115.427 also exempt these facilities from §115.421(a)(13) once they begin complying with the new requirements of §115.421(a)(14) and §115.422(3). This will ensure that these wood furniture manufacturing facilities only have to comply with one set of requirements at a time. Wood parts/products coating operations in the Beaumont/Port ozone nonattainment area with VOC emissions less than 25 tons per year continue to be exempt from the requirements of §115.421(a)(13).

Finally, the proposed changes to §115.427 add an exemption for hand-held, nonrefillable, aerosol containers ("spray paint"). This exemption is being added because surface coating operations

which include use of spray paint typically will limit its use due to cost considerations and switch to more conventional spray guns and coatings if more than a deminimis amount of spray paint is used. In addition, the EPA has published notice of its intent to regulate spray paint under a national consumer and commercial products rule (60 FR 15264, March 23, 1995) as required by FCAA §183(e).

The proposed changes to §115.429, concerning Counties and Compliance Schedules, specify the compliance schedules for the new requirements.

FISCAL NOTE Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be insignificant fiscal implications for state and local governments as a result of enforcing or administering the proposed amendments. Specifically, most of the wood furniture manufacturing facilities which will be subject to the proposed rules are already subject to similar, but less stringent, rules under the existing §115.421(a)(13). Only wood furniture manufacturing facilities in the Beaumont/Port Arthur ozone nonattainment area with VOC emissions of at least 25 tons per year are currently exempt from §115.421(a)(13) but subject to the proposed new emission specifications and control requirements. Consequently, only a limited number of additional wood furniture manufacturing facilities will need to be inspected for compliance with the Chapter 115 surface coating rules. Also, because the proposed shipbuilding/ship repair coating rules are limited to sources in the Beaumont/Port Arthur and Houston/Galveston ozone nonattainment areas with VOC emissions from ship and offshore oil or gas drilling platform surface coating operations of at least 100 tons per year and 25 tons per year, respectively, only a relatively small number of facilities will need to be inspected for compliance with the proposed rules.

PUBLIC BENEFIT Mr. Minick has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA requirements, VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard, and reduced public exposure to a variety of VOCs. The cost to small businesses, persons, or businesses who are required to comply with the rules as proposed is anticipated to be an average of $21,000 per year per wood furniture manufacturing facility based upon the EPA's estimate in Tables 6-4 and 6-6 of the wood furniture manufacturing CTG; and an average of $11,000 per year per shipbuilding/ship repair operation, based upon EPA's estimate in the shipbuilding/ship repair CTG (61 FR 44052, August 27, 1996).

DRAFT REGULATORY IMPACT ANALYSIS The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because although it meets the definition of a "major environmental rule" as defined in the act, it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to add wood furniture coating rules and shipbuilding/ship repair coating rules which are based upon two CTG guidance documents issued by the EPA, as required by §182(b)(2) of the FCAA. Promulgation and enforcement of the rule amendments will not affect private real property which is the subject of the rules because this rulemaking action does not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Further, this rulemaking is not the producing cause of a reduction in the market value of private real property. Therefore, this action does not create a burden on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Code of Federal Regulations, Title 40, to protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule revisions, and the revisions are expected to result in a reduction in VOC emissions. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING A public hearing on this proposal will be held in Austin on January 13, 1998 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Office Complex, 12100 Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Policy and Regulatory Development at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97131-115-AI. Comments must be received by 5:00 p.m., January 20, 1998. For further information, please contact Eddie Mack, Air Policy and Regulations Division, at (512) 239-1488.

Subchapter A. Definitions

30 TAC §115.10

STATUTORY AUTHORITY The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas

Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

CROSS REFERENCE TO STATUTE The proposed amendment implements the Health and Safety Code, §382.017.

§115.10. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §101.1 of this title (relating to Definitions) and §3.2 of this title (relating to Definitions).

[~~Architectural coating- Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes.~~]

[~~Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops)) - A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound (VOC) content of a basecoat (bc)/clearcoat (cc) system shall be calculated according to the following formula:~~]

[~~Figure 1: 30 TAC 115.10~~]

[~~Automotive precoat (used in vehicle refinishing (body shops)) - Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.~~]

[~~Automotive pretreatment (used in vehicle refinishing (body shops)) - Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion.~~]

[~~Automotive primer or primer surfacers (used in vehicle refinishing (body shops)) - Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.~~]

[~~Automotive sealers (used in vehicle refinishing (body shops)) - Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.~~]

[~~Automotive specialty coatings (used in vehicle refinishing (body shops)) - Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.~~]

[~~Automotive three-stage system (used in vehicle refinishing (body shops)) - A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The volatile organic compound (VOC) content of a three-stage system shall be calculated according to the following formula:~~]

[~~Figure 2: 30 TAC §115.10~~]

[~~Automotive wipe-down solutions (used in vehicle refinishing (body shops)) - Any solution used for cleaning and surface preparation.~~]

[~~Clear coat (used in wood parts and products coating) - A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.~~]

[~~Clear sealers (used in wood parts and products coating) - Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.~~]

[~~Coating - A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.~~]

[~~Coating application system - Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.~~]

[~~Coating line - An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.~~]

[~~Drum (metal) - Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).~~]

[~~Extreme performance coating- A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.~~]

[~~Final repair coat (used in wood parts and products coating) - Liquids applied to correct imperfections or damage to the topcoat.~~]

[~~High-bake coatings- Coatings designed to cure at temperatures above 194 degrees Fahrenheit.~~]

[~~High-volume low-pressure spray guns - Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.~~[

[~~Low-bake coatings- Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.~~]

[~~Non-flat architectural coating- Any coating which registers a gloss of 15 or greater on an 85 degree gloss meter or 5 or greater on a 60 degree gloss meter, and which is identified on the label as gloss, semigloss, or eggshell enamel coating.~~]

[~~Opaque ground coats and enamels (used in wood parts and products coating) - Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.~~]

[~~Pail (metal)- Any cylindrical metal shipping container with a nominal capacity equal to or greater than 1 gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.~~]

[~~Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents) - Basis for emission limits for surface coating processes. Can be calculated by the following equation:~~]

[~~Figure 3: 30 TAC §115.10~~]

[~~Pounds of volatile organic compounds (VOC) per gallon of solids - Basis for emission limits for surface coating process. Can be calculated by the following equation:~~]

[Figure 4: 30 TAC §115.10]

[Semitransparent spray stains and toners (used in wood parts and products coating) - Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and nongrain-raising stains.]

[Semitransparent wiping and glazing stains (used in wood parts and products coating) - Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.]

[Shellacs (used in wood parts and products coating) - Coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.]

[Surface coating processes - Operations which utilize a coating application system.]

[(A) Large appliance coating - The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.]

[(B) Metal furniture coating - The coating of metal furniture (tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.]

[(C) Coil coating - The coating of any flat metal sheet or strip supplied in rolls or coils.]

[(D) Paper coating - The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).]

[(E) Fabric coating - The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).]

[(F) Vinyl coating - The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.]

[(G) Can coating - The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass-produced cans.]

[(H) Automobile coating - The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.]

[(I) Light-duty truck coating - The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.]

[(J) Miscellaneous metal parts and products coating - The coating of miscellaneous metal parts and products in the following categories:]

[*(i)* large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);]

[*(ii)* small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);]

[*(iii)* small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);]

[*(iv)* commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);]

[*(v)* industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);]

[*(vi)* fabricated metal products (metal-covered doors, frames, etc.); and]

[*(vii)* any other category of coated metal products, except the specified list in subparagraphs (A)-(I) of surface coating processes, including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).]

[(K) Factory surface coating of flat wood paneling - Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tile board .]

[(L) Mirror backing coating - The application of coatings to the silvered surface of a mirror.]

[(M) Wood parts and products coating - The coating of wood parts and products, excluding factory surface coating of flat wood paneling.]

[Topcoat (used in wood parts and products coating) - A coating which provides the final protective and aesthetic properties to wood finishes.]

[Transfer efficiency - The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.]

[Varnishes (used in wood parts and products coating) - Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.]

[Vehicle refinishing (body shops) - The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by a commercial operation other than the original manufacturer. The repair and recoating of trailers and construction equipment are not included.]

[Volatile organic compound- Any compound of carbon or mixture of carbon compounds excluding methane, ethane, 1,1,1-trichloroethane (methyl chloroform), methylene chloride (dichloromethane), perchloroethylene (tetrachloroethylene), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22), trifluoromethane (HFC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1,2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), parachlorobenzotrifluoride (PCBTF), cyclic, branched, or linear completely methylated siloxanes, acetone, 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca), 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb), 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee),

~~carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and perfluorocarbon compounds which fall into these classes:~~]

[~~(A) cyclic, branched, or linear, completely fluorinated alkanes;~~]

[~~(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;~~]

[~~(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and~~]

[~~(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~]

[~~Wash coat (used in wood parts and products coating) - A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.~~]]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716239
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1970

♦ ♦ ♦

Subchapter E. Solvent-Using Processes

Surface Coating Processes

30 TAC §§115.420–115.423, 115.426, 115.427, 115.429

The amendments and new section are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

The proposed amendments and new section implements the Health and Safety Code, §382.017.

§115.420. Surface Coating Definitions.

(a) General surface coating definitions. The following terms, when used in this undesignated head (relating to Surface Coating Processes), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this undesignated head are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).

(1) Coating - A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(2) Coating application system - Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

(3) Coating line - An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.

(4) Coating solids (or solids) - The part of a coating that remains after the coating is dried or cured.

(5) High-volume low-pressure (HVLP) spray guns - Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(6) Normally closed container - A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(7) Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents) - Basis for emission limits for surface coating processes. Can be calculated by the following equation:
Figure 1: 30 TAC §115.420(a)(7)

(8) Pounds of VOC per gallon of solids - Basis for emission limits for surface coating process. Can be calculated by the following equation:
Figure 2: 30 TAC §115.420(a)(8)

(9) Surface coating processes - Operations which utilize a coating application system.

(10) Transfer efficiency - The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.

(b) Specific surface coating definitions. The following terms, when used in this undesignated head (relating to Surface Coating Processes), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aerospace vehicle or component. Any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

(2) Architectural coating.

(A) Architectural coating - Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes.

(B) Non-flat architectural coating - Any coating which registers a gloss of 15 or greater on an 85 degree gloss meter or 5 or greater on a 60 degree gloss meter, and which is identified on the label as gloss, semigloss, or eggshell enamel coating.

(3) Can coating. The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass-produced cans.

(4) Coil coating. The coating of any flat metal sheet or strip supplied in rolls or coils.

(5) Fabric coating. The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).

(6) Factory surface coating of flat wood paneling. Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tile board.

(7) Large appliance coating. The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(8) Metal furniture coating. The coating of metal furniture (tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.

(9) Mirror backing coating. The application of coatings to the silvered surface of a mirror.

(10) Miscellaneous metal parts and products coating.

(A) Clear coat - A coating which lacks opacity or which is transparent and which may or may not have an undercoat that is used as a reflectant base or undertone color.

(B) Drum (metal) - Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

(C) Extreme performance coating - A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.

(D) High-bake coatings - Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(E) Low-bake coatings - Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

(F) Miscellaneous metal parts and products coating - The coating of miscellaneous metal parts and products in the following categories:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, except those surface coating processes specified in paragraphs (2) - (9) and (11)-(15) of this subsection, including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

(G) Pail (metal) - Any cylindrical metal shipping container with a nominal capacity equal to or greater than 1 gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.

(11) Paper coating. The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).

(12) Marine coatings.

(A) Air flask specialty coating - Any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

(B) Antenna specialty coating - Any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

(C) Antifoulant specialty coating - any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the United States Environmental Protection Agency as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(D) Batch - The product of an individual production run of a coating manufacturer's process. (A batch may vary in composition from other batches of the same product.)

(E) Bitumens - Black or brown materials that are soluble in carbon disulfide, which consist mainly of hydrocarbons.

(F) Bituminous resin coating - Any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

(G) Epoxy - Any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

(H) General use coating - Any coating that is not a specialty coating.

(I) Heat resistant specialty coating - Any coating that during normal use must withstand a temperature of at least 204 degrees Celsius (400 degrees Fahrenheit).

(J) High-gloss specialty coating - Any coating that achieves at least 85% reflectance on a 60 degree meter when tested by the American Society for Testing and Materials (ASTM) Method D-523.

(K) High-temperature specialty coating - Any coating that during normal use must withstand a temperature of at least 426 degrees Celsius (800 degrees Fahrenheit).

(L) Inorganic zinc (high-build) specialty coating - A coating that contains 960 grams per liter (eight pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than two mil dry film thickness.)

(M) Maximum allowable thinning ratio - The maximum volume of thinner that can be added per volume of coating without exceeding the applicable VOC limit of §115.421(a)(15)(A) of this title (relating to Emission Specifications).

(N) Military exterior specialty coating - Any exterior topcoat applied to military or U.S. Coast Guard vessels that are

subject to specific chemical, biological, and radiological washdown requirements.

(O) Mist specialty coating - Any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

(P) Navigational aids specialty coating - Any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

(Q) Nonskid specialty coating - Any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

(R) Nonvolatiles (or volume solids) - Substances that do not evaporate readily. This term refers to the film-forming material of a coating.

(S) Nuclear specialty coating - Any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082-83), relatively easy to decontaminate (ASTM D4256-83), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM 3912-80). (For nuclear coatings, see the general protective requirements outlined by the U.S. Atomic Energy Commission in a report entitled "U.S. Atomic Energy Commission Regulatory Guide 1.54" dated June 1973, available through the Government Printing Office at (202) 512-2249 as document number A74062-00001.)

(T) Organic zinc specialty coating - Any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (eight pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

(U) Pleasure craft - Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters (65.6 feet) in length. A vessel rented exclusively to, or chartered for, individuals for such purposes shall be considered a pleasure craft.

(V) Pretreatment wash primer specialty coating - Any coating that contains a minimum of 0.5% acid by weight that is applied only to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(W) Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating) - Any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered "general use" coatings.)

(X) Rubber camouflage specialty coating - Any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes.

(Y) Sealant for thermal spray aluminum - Any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of one dry mil.

(Z) Ship - Any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. Pleasure craft and offshore oil or gas drilling platforms are not considered ships.

(AA) Shipbuilding and ship repair operations - Any building, repair, repainting, converting, or alteration of ships or offshore oil or gas drilling platforms.

(BB) Special marking specialty coating - Any coating that is used for safety or identification applications, such as ship numbers and markings on flight decks.

(CC) Specialty interior coating - Any coating used on interior surfaces aboard U.S. military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

(DD) Tack coat specialty coating - Any thin film epoxy coating applied at a maximum thickness of two dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

(EE) Undersea weapons systems specialty coating - Any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

(FF) Weld-through preconstruction primer (specialty coating) - A coating that provides corrosion protection for steel during inventory, is typically applied at less than one mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters (0.5 inches)), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

(13) Vehicle coating.

(A) Automobile and light-duty truck manufacturing.

(i) Automobile coating - The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(ii) Light-duty truck coating - The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(B) Vehicle refinishing (body shops).

(i) Basecoat/clearcoat system - A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The VOC content of a basecoat (bc)/clearcoat (cc) system shall be calculated according to the following formula:
Figure 3: 30 TAC §115.420(b)(13)(B)(i)

(ii) Precoat - Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

(iii) Pretreatment - Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(iv) Primer or primer surfacers - Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

(v) Sealers - Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

(vi) Specialty coatings - Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.

(vii) Three-stage system - A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The VOC content of a three-stage system shall be calculated according to the following formula:
Figure 4: 30 TAC §115.420(b)(13)(B)(vii)

(viii) Wipe-down solutions - Any solution used for cleaning and surface preparation.

(ix) Vehicle refinishing (body shops) - The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by a commercial operation other than the original manufacturer. The repair and recoating of trailers and construction equipment are not included.

(14) Vinyl coating. The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(15) Wood parts and products coating.

(A) The following terms apply to wood parts and products coating facilities subject to §115.421(a)(13) of this title.

(i) Clear coat - A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

(ii) Clear sealers - Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.

(iii) Final repair coat - Liquids applied to correct imperfections or damage to the topcoat.

(iv) Opaque ground coats and enamels - Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

(v) Semitransparent spray stains and toners - Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and nongrain-raising stains.

(vi) Semitransparent wiping and glazing stains - Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.

(vii) Shellacs - Coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(viii) Topcoat - A coating which provides the final protective and aesthetic properties to wood finishes.

(ix) Varnishes - Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(x) Wash coat - A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.

(xi) Wood parts and products coating - The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

(B) The following terms apply to wood furniture manufacturing facilities subject to §115.421(a)(14) of this title.

(i) Adhesive - Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means. Adhesives are not considered to be coatings or finishing materials for wood furniture manufacturing facilities subject to §115.421(a)(14) of this title.

(ii) Basecoat - A coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials and is usually topcoated for protection.

(iii) Cleaning operations - Operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

(iv) Continuous coater - A finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater, including spraying, curtain coating, roll coating, dip coating, and flow coating.

(v) Conventional air spray - A spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than 10 pounds per square inch gauge (psig) at the point of atomization. Airless and air-assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece. In addition, high-volume low-pressure (HVLP) spray technology is not conventional air spray because its pressure is less than 10 psig.

(vi) Finishing application station - The part of a finishing operation where the finishing material is applied (for example, a spray booth).

(vii) Finishing material - A coating used in the wood furniture industry. For the wood furniture manufacturing industry, such materials include, but are not limited to, basecoats, stains, washcoats, sealers, and topcoats.

(viii) Finishing operation - Those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

(ix) Organic solvent - A liquid containing VOCs that is used for dissolving or dispersing constituents in a coating; adjusting the viscosity of a coating; cleaning; or washoff. When used

in a coating, the organic solvent evaporates during drying and does not become a part of the dried film.

(x) Sealer - A finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Washcoats, which are used in some finishing systems to optimize aesthetics, are not sealers.

(xi) Stain - Any color coat having a solids content of no more than 8.0% by weight that is applied in single or multiple coats directly to the substrate. Includes, but is not limited to, nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

(xii) Strippable booth coating - A coating that is applied to a booth wall to provide a protective film to receive overspray during finishing operations; is subsequently peeled off and disposed; and reduces or eliminates the need to use organic solvents to clean booth walls.

(xiii) Topcoat - The last film-building finishing material applied in a finishing system. A material such as a wax, polish, nonoxidizing oil, or similar substance that must be periodically reapplied to a surface over its lifetime to maintain or restore the reapplied material's intended effect is not considered to be a topcoat.

(xiv) Touch-up and repair - The application of finishing materials to cover minor finishing imperfections.

(xv) Washcoat - A transparent special purpose coating having a solids content of 12% by weight or less. Washcoats are applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

(xvi) Washoff operations - Those operations in which organic solvent is used to remove coating from a substrate.

(xvii) Wood furniture - Any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434 (wood kitchen cabinets), 2511 (wood household furniture, except upholstered), 2512 (wood household furniture, upholstered), 2517 (wood television, radios, phonograph and sewing machine cabinets), 2519 (household furniture not elsewhere classified), 2521 (wood office furniture), 2531 (public building and related furniture), 2541 (wood office and store fixtures, partitions, shelving and lockers), 2599 (furniture and fixtures not elsewhere classified), or 5712 (custom kitchen cabinets).

(xviii) Wood furniture component - Any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

(xix) Wood furniture manufacturing operations - The finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

§115.421. Emission Specifications.

(a) No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating processes [~~as defined in §115.10 of this title~~] affected by paragraphs (1)-(15) [~~(1)-(13)~~] of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (10) of this subsection which are based on paneling surface area, [~~and~~] those in paragraph (11) of this subsection which are based on the VOC content of architectural coatings sold or offered for sale, and those in paragraph (14) of this subsection which, if using an averaging approach, must use one of the averaging equations within that paragraph. For the purposes of this undesignated head (relating to Surface Coating Processes), daily weighted average means the total weight of VOC emissions from all coatings, divided by the total volume of all coatings (minus water and exempt solvent) delivered to the application system [~~applied~~] each day.

(1)-(7) (No change.)

(8) Vehicle coating.

(A) (No change.)

(B) VOC emissions from the coatings or solvents used in vehicle refinishing (body shops) [~~as defined in §115.10 of this title~~] shall not exceed the following limits, as delivered to the application system:

(i) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for primers or primer surfacers [~~, as defined in §115.10 of this title~~];

(ii) 5.5 pounds per gallon (0.66 kg/liter) of coating (minus water and exempt solvent) for precoat [~~, as defined in §115.10 of this title~~];

(iii) 6.5 pounds per gallon (0.78 kg/liter) of coating (minus water and exempt solvent) for pretreatment [~~, as defined in §115.10 of this title~~];

(iv) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for single-stage topcoats;

(v) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for basecoat/clearcoat systems [~~, as defined in §115.10 of this title~~];

(vi) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) for three-stage systems [~~, as defined in §115.10 of this title~~];

(vii) 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) for specialty coatings [~~, as defined in §115.10 of this title~~];

(viii) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for sealers [~~, as defined in §115.10 of this title~~]; and

(ix) 1.4 pounds per gallon (0.17 kg/liter) of wipe-down solutions [~~, as defined in §115.10 of this title~~].

(C) (No change.)

(9)-(12) (No change.)

(13) Surface coating of wood parts and products.

(A) In the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, VOC emissions from the coating of wood parts and products shall not exceed the following limits, as delivered to the application system, for each surface coating type:

(i) 5.9 pounds per gallon (0.71 kg/liter) of coating (minus water and exempt solvent) for clear topcoats [~~, as defined in §115.10 of this title~~];

(ii) 6.5 pounds per gallon (0.78 kg/liter) of coating (minus water and exempt solvent) for wash coats [~~, as defined in §115.10 of this title~~];

(iii) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for final repair coats [~~, as defined in §115.10 of this title~~];

(iv) 6.6 pounds per gallon (0.79 kg/liter) of coating (minus water and exempt solvent) for semitransparent wiping and glazing stains [~~, as defined in §115.10 of this title~~];

(v) 6.9 pounds per gallon (0.83 kg/liter) of coating (minus water and exempt solvent) for semitransparent spray stains and toners [~~, as defined in §115.10 of this title~~];

(vi) 5.5 pounds per gallon (0.66 kg/liter) of coating (minus water and exempt solvent) for opaque ground coats and enamels [~~, as defined in §115.10 of this title~~];

(vii) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) for clear sealers [~~, as defined in §115.10 of this title~~];

(viii) for shellac [~~, as defined in §115.10 of this title~~]:

(I)-(II) (No change.)

(ix) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for varnish [~~, as defined in §115.10 of this title~~]; and

(x) (No change.)

(B)-(C) (No change.)

(14) Surface coating at wood furniture manufacturing facilities. After December 31, 1999, the following requirements apply to wood furniture manufacturing facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. For facilities which are subject to this paragraph, adhesives are not considered to be coatings or finishing materials.

(A) VOC emissions from finishing operations shall be limited by:

(i) Using topcoats with a VOC content no greater than 0.8 kilograms of VOC per kilogram of solids (0.8 pounds of VOC per pound of solids), as delivered to the application system; or

(ii) Using a finishing system of sealers with a VOC content no greater than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and topcoats with a VOC content no greater than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iii) For wood furniture manufacturing facilities using acid-cured alkyd amino vinyl sealers or acid-cured alkyd amino conversion varnish topcoats, using sealers and topcoats which meet the following criteria.

(I) If the wood furniture manufacturing facility uses acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats, the sealer shall contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat shall contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(II) If the wood furniture manufacturing facility uses a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured alkyd amino conversion varnish topcoats, the sealer shall contain no more than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and the topcoat shall contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(III) If the wood furniture manufacturing facility uses an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the sealer shall contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat shall contain no more than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iv) Using an averaging approach and demonstrating that actual emissions from the wood furniture manufacturing facility are less than or equal to the lower of the actual versus allowable emissions using one of the following inequalities:
Figure 1: 30 TAC §115.421(a)(14)(A)(iv)

(v) Using a vapor recovery system that will achieve an equivalent reduction in emissions as the requirements of clauses (i) or (ii) of this subparagraph. If this option is used, the requirements of §115.423(a)(3) of this title (relating to Alternate Control Requirements) do not apply; or

(vi) Using a combination of the methods presented in clauses (i), (ii), (iii), (iv), and (v) of this subparagraph.

(B) Strippable booth coatings used in cleaning operations shall contain no more than 0.8 kilograms of VOC per kilogram of solids (0.8 pounds of VOC per gallon of solids), as delivered to the application system.

(15) Marine coatings. After December 31, 1999, the following requirements apply to shipbuilding and ship repair operations in the Beaumont/Port Arthur and Houston/Galveston areas.

(A) The following VOC emission limits apply to the surface coating of ships and offshore oil or gas drilling platforms at shipbuilding and ship repair operations, and are based upon the VOC content of the coatings as delivered to the application system:
Figure 2: 30 TAC 115.421(a)(15)(A)

(B) For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall determine the VOC content as follows.

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the shipbuilding and ship repair operation complies with the cold-weather limits in addition to the other limits specified in subparagraph (A) of this paragraph) for each batch as follows:
Figure 3: 30 TAC §115.421(a)(15)(B)(i)

(ii) If V_s is not supplied directly by the coating manufacturer, the owner or operator shall determine V_s as follows:
Figure 4: 30 TAC §115.421(a)(15)(B)(ii)

(b) No person in Gregg, Nueces, and Victoria Counties may cause, suffer, allow, or permit VOC emissions from the surface coating processes [~~as defined in §115.10 of this title~~] affected by paragraphs (1)-(9) of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average

of all coatings delivered to each coating line, except for those in paragraph (9) of this subsection which are based on paneling surface area. For the purposes of this undesignated head (relating to Surface Coating Processes), daily weighted average means the total weight of VOC emissions from all coatings, divided by the total volume of all coatings (minus water and exempt solvent) delivered to the application system [~~applied~~] each day.

(1)-(9) (No change.)

§115.422. Control Requirements.

For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

(1) (No change.)

(2) Each vehicle refinishing (body shop) operation shall use coating application equipment with a transfer efficiency of at least 65%, unless otherwise specified in an alternate means of control approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control). High-volume low-pressure (HVLP) spray guns [~~, as defined in §115.10 of this title (relating to Definitions),~~] are assumed to comply with the 65% transfer efficiency requirement.

(3) The following requirements apply to each wood furniture manufacturing facility subject to §115.421(a)(14) of this title (relating to Emission Specifications).

(A) No compounds containing more than 8.0% by weight of volatile organic compounds (VOC) shall be used for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, and/or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, no more than 1.0 gallon of organic solvent shall be used to prepare the booth prior to applying the booth coating.

(B) Only normally closed containers shall be used for storage of finishing, cleaning, and washoff materials.

(C) Conventional air spray guns shall not be used for applying finishing materials except under one or more of the following circumstances:

(i) To apply finishing materials that have a VOC content no greater than 1.0 kilograms of VOC per kilogram of solids (1.0 pounds of VOC per pound of solids), as delivered to the application system;

(ii) For touch-up and repair under the following circumstances:

(I) The finishing materials are applied after completion of the finishing operation; or

(II) The finishing materials are applied after the stain and before any other type of finishing material is applied, and the finishing materials are applied from a container that has a volume of no more than 2.0 gallons.

(iii) If spray is automated, that is, the spray gun is aimed and triggered automatically, not manually;

(iv) If emissions from the finishing application station are directed to a vapor recovery system;

(v) The conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0% of the total gallons of finishing material used during that semiannual period; or

(vi) The conventional air gun is used to apply stain on a part for which:

(I) the production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(II) the excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(D) All organic solvent used for line cleaning or to clean spray guns shall be pumped or drained into a normally closed container.

(E) Emissions from washoff operations shall be minimized by:

(i) using normally closed tanks for washoff; and

(ii) minimizing dripping by tilting or rotating the part to drain as much organic solvent as possible.

(4) The following requirements apply to each shipbuilding and ship repair surface coating facility subject to §115.421(a)(15) of this title.

(A) All handling and transfer of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems shall be conducted in a manner that minimizes spills.

(B) All containers, tanks, vats, drums, and piping systems shall be free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.

(C) All organic solvent used for line cleaning or to clean spray guns shall be pumped or drained into a normally closed container.

(5) [~~(3)~~] Any surface coating operation that becomes subject to the provisions of §115.421(a) of this title [~~(relating to Emission Specifications)~~] by exceeding the provisions of §115.427(a) of this title (relating to Exemptions) shall remain subject to the provisions in §115.421(a) of this title, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.427(a) of this title, and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Exemptions from Permitting). If a standard exemption is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

(B) if authorization by permit, permit amendment, standard permit, or standard exemption is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.

§115.423. Alternate Control Requirements.

(a) For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following alternate control requirements may apply.

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title (relating to Alternate Emission Reduction "Bubble" Policy), §115.910 of this title (relating to Availability of Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this undesignated head (relating to Surface Coating Processes) [~~section~~] shall be based on the pounds of volatile organic compounds (VOC) per gallon of solids for all affected coatings. The following equation shall be used to convert emission limits from pounds of VOC per gallon of coating to pounds of VOC per gallon of solids:
Figure 1: 30 TAC §115.423(a)(1)

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this undesignated head, such as use of improved transfer efficiency [~~in this section~~], may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.

(3)-(4) (No change.)

(b) For all affected persons in Gregg, Nueces, and Victoria Counties, the following alternate control requirements may apply:

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title, §115.910 of this title, or other demonstrations of equivalency with the specified emission limits in this undesignated head (relating to Surface Coating Processes) [~~section~~] shall be based on the pounds of VOC per gallon of solids for all affected coatings. The following equation shall be used to convert emission limits from pounds of VOC per gallon of coating to pounds of VOC per gallon of solids:
Figure 2: 30 TAC §115.423(b)(1)

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this undesignated head, such as use of improved transfer efficiency [~~in this section~~], may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.

(3)-(4) (No change.)

§115.426. Monitoring and Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following recordkeeping requirements shall apply:

(1) Any person affected by §115.421(a) of this title (relating to Emission Specifications) shall satisfy the following recordkeeping requirements.

(A) (No change.)

(B) Records shall be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period. Such records shall be sufficient to calculate the applicable weighted average of VOC for all coatings.

(i) As an alternative to the recordkeeping requirements of this subparagraph, any vehicle refinishing (body shop) operation subject to [~~affected by~~] §115.421(a)(8)(B) of this title may substitute the recordkeeping requirements specified in §106.436 of this title (relating to Auto Body Refinishing Facility (Previously Standard Exemption 124)) [~~Standard Exemption 124 as referenced in §116.211 of this title (relating to Standard Exemption List)~~] provided that all coatings and solvents meet the emission limits of §115.421(a)(8)(B) of this title. If a [~~an affected~~] vehicle refinishing (body shop) operation uses any coating(s) or solvent(s) which exceeds the limits of §115.421(a)(8)(B) of this title, then that vehicle refinishing (body shop) operation shall maintain daily records of the quantity and type of each coating and solvent consumed in sufficient detail to calculate the daily weighted average of VOC for all coatings and solvents.

(ii) As an alternative to the recordkeeping requirements of this subparagraph, any wood parts and products coating operation subject to §115.421(a)(13) of this title may substitute the recordkeeping requirements specified in §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products) provided that all coatings and solvents meet the emission limits of §115.421(a)(13) of this title. If a wood parts and products coating operation uses any coating(s) or solvent(s) which exceeds the limits of §115.421(a)(13) of this title, then that wood parts and products coating operation shall maintain daily records of the quantity and type of each coating and solvent consumed in sufficient detail to calculate the daily weighted average of VOC for all coatings and solvents.

(C)-(D) (No change.)

(2) The owner or operator of any surface coating facility which utilizes a vapor recovery system approved by the executive director in accordance with §115.423(a)(3) of this title (relating to Alternate Control Requirements) shall:

(A) install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:

(i) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

(ii)-(iv) (No change.)

(B)-(C) (No change.)

(3)-(4) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, the following recordkeeping requirements shall apply:

(1) (No change.)

(2) The owner or operator of any surface coating facility which utilizes a vapor recovery system approved by the executive director in accordance with §115.423(b)(3) of this title shall:

(A) install and maintain monitors to accurately measure and record operational parameters of all required control devices as necessary to ensure the proper functioning of those devices in accordance with design specifications; including

(i) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

(ii)-(iv) (No change.)

(B)-(C) (No change.)

(3) (No change.)

§115.427. Exemptions.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply:

(1) The following coating operations are exempt from the application of §115.421(a)(9) of this title (relating to Emission Specifications):

(A) (No change.)

(B) vehicle refinishing (body shops), except as required by §115.421(a)(8)(B) and (C) of this title; and

(C) ships and offshore oil or gas drilling platforms, except as required by §115.421(a)(15) of this title.

[~~(C) exterior of fully assembled marine vessels; and~~]

[~~(D) exterior of fully assembled fixed offshore structures.~~]

(2) (No change.)

(3) The following exemptions shall apply to surface coating operations, except for aircraft prime coating controlled by §115.421(a)(9)(A)(v) of this title and vehicle refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title.

(A) Surface coating operations on a property which, when uncontrolled, will emit a combined weight of VOC of less than 3 pounds per hour and 15 pounds in any consecutive 24-hour period shall be exempt from the provisions of §115.421(a) of this title [~~(relating to Emissions Specifications)~~] and §115.423(a) of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property which, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period shall be exempt from the provisions of §115.421(a) [~~of this title (relating to Emissions Specifications)~~] and §115.423(a) of this title [~~(relating to Alternate Control Requirements)~~] if documentation is provided to and approved by both the executive director [~~of TACB~~] and EPA to demonstrate that necessary coating performance criteria cannot be achieved with coatings which satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(C) (No change.)

(D) Wood furniture manufacturing facilities which are subject to and are complying with the requirements of §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from the requirements of §115.421(a)(13) of this title. These wood furniture manufacturing facilities shall continue to comply with the requirements of §115.421(a)(13) of this title until these facilities are in compliance with the requirements of §115.421(a)(14) and §115.422(3) of this title.

(E) Wood furniture manufacturing facilities which, when uncontrolled, emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year are exempt from the requirements of §115.421(a)(14) and §115.422(3) of this title.

(F) Wood parts and products coating facilities in Hardin, Jefferson, and Orange Counties are exempt from the requirements of §115.421(a)(13) of this title.

(G) Shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties which, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 100 tons per year are exempt from the requirements of §115.421(a)(15) and §115.422(4) of this title.

(H) Shipbuilding and ship repair operations in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties which, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tons per year are exempt from the requirements of §115.421(a)(15) and §115.422(4) of this title.

(I) Coatings applied with hand-held, nonrefillable, aerosol containers ("spray paint") are exempt from the requirements of this undesignated head (relating to Surface Coating Processes).

(4)-(6) (No change.)

(b) (No change.)

§115.429. Counties and Compliance Schedules.

(a) All wood furniture manufacturing facilities affected by §115.421(a)(14) of this title (relating to Emission Specifications) in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall be in compliance with §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) as soon as practicable, but no later than December 31, 1999. All wood furniture manufacturing facilities subject to §115.421(a)(14) of this title in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall continue to comply with the requirements of §115.421(a)(13) of this title until these coating operations are in compliance with the requirements of §115.421(a)(14) and §115.422(3) of this title.

(b) All shipbuilding and ship repair surface coating facilities subject to §115.421(a)(15) of this title in Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller Counties shall be in compliance with this undesignated head (relating to Surface Coating Processes) as soon as practicable, but no later than December 31, 1999.

[~~(a) All wood parts and products surface coating affected by §115.421(a)(13) of this title (relating to Emission Specifications) in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with this undesignated head (relating to Surface Coating Processes) as soon as practicable, but no later than November 15, 1996.~~]

[~~(b) For persons affected by the change from gallon of solids to gallon of coating (minus water and exempt solvents) for calculating VOC content in §115.421 of this title, any coating operation which does not meet the emission limits (pounds of VOC per gallon of coating, minus water and exempt solvent) in §115.421 of this title but which meets the emission limits (pounds of VOC per gallon of solids) in §115.421 of this title (as in effect June 16, 1995) shall be in compliance with the emission limits (pounds of VOC per gallon of coating, minus water and exempt solvent) in §115.421 of this title as soon as practicable, but no later than December 31, 1996. All such coating operations shall continue to comply with the emission limits (pounds of VOC per gallon of solids) in §115.421 of this title (as in effect June 16, 1995) until these coating operations are in compliance with the emission limits (pounds of VOC per gallon of coating, minus water and exempt solvent) under §115.421 of this title.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716240
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1970

♦ ♦ ♦

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §116.12, concerning Nonattainment Review Definitions, §116.150, concerning New Major Source or Major Modification in Ozone Nonattainment Area, and §116.151, concerning New Major Source or Major Modification in Nonattainment Area Other than Ozone.

EXPLANATION OF THE PROPOSED RULES. The Federal Clean Air Act (FCAA), §182(b)(1) and (f) specifies that required measures for volatile organic compounds (including reasonably available control technology (RACT) and nonattainment new source review (NNSR)) must also be applied for nitrogen oxides (NO_x), unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The FCAA, §182(f) allows the following federally required NO_x measures to be waived if the state demonstrates that NO_x reductions do not contribute to ozone attainment: RACT, NNSR, vehicle inspection/maintenance, and general and transportation conformity. On April 12, 1995, the United States Environmental Protection Agency (EPA) approved a temporary §182(f) exemption from these NO_x measures in Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA). EPA's approval was based on the state's preliminary demonstration, using Urban Airshed Model (UAM) modeling, that NO_x reductions in HGA and BPA would not lower ozone levels, and in fact could make them worse ("NO_x disbenefit"). The temporary exemption allowed more time to conduct UAM modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results were judged critical in determining whether, and to what extent, NO_x reductions are needed to attain the ozone standard. The EPA specified that the temporary exemption would expire on December 31, 1996. On May 23, 1997, the EPA approved a one-year extension of the §182(f) temporary exemption, which now expires on December 31, 1997. This additional year allows the UAM modeling, using COAST data, to accommodate improvements in the modeling process, and to allow the development of better substantiated control programs.

As a result of the original exemption and extension, the agency revised certain rules, including §116.150, to be consistent with the §182(f) waiver. In the Fall of 1997, the TNRCC staff completed a major modeling analysis of the airshed of the upper Texas Gulf Coast. This study indicated that NO_x reductions are a necessary step toward the area's attaining the federal air quality standard for ozone. Because of the modeling and the need to continue steady reductions of the pollutants that contribute to ozone smog, on November 24, 1997, the commission determined not to seek further federal §182(f) waivers from the NO_x reduction requirements of the 1990 FCAA for the HGA and BPA areas.

These amendments to Chapter 116 reinstate full NNSR, consisting of application of lowest achievable emission rate (LAER), compliance certification, offsets, and alternative site analysis. These NNSR requirements will be reflected in permits for new or modified sources which are major for NO_x in HGA and BPA, issued after the §182(f) exemption expires on December 31, 1997.

In addition, the rulemaking would implement certain aspects of EPA's New Source Review (NSR) reform package, which clarifies permitting requirements as a result of the 1990 FCAA. The proposed rulemaking includes two clarifications which were discussed in the Prevention of Significant Deterioration and NNSR proposed rule published in the *Federal Register* on July 23, 1996. The federal rulemaking provides EPA's interpretation of §182(c)(6), (7), and (8) of the 1990 FCAA amendments, which allows that creditable internal offsets may be used in certain nonattainment areas to either: avoid NNSR at existing major sources that emit, or have the potential to emit, less than 100 tons per year (tpy) of an ozone precursor; or substitute Best Available Control Technology (BACT) for LAER at existing major sources that emit, or have the potential to emit, 100 tpy or more of an ozone precursor. The proposed revisions to §116.150(a)(1) and (3) incorporate language to allow these substitutions.

Second, the proposed rule interprets that the FCAA requires a preliminary step of determining whether there is an "increase in the net emissions" from the proposed modification for which NSR applicability is in question. Where there is a "project net" increase in emissions, the next step is to combine those "project net" increases with the contemporaneous increases and decreases to determine if NNSR is required. Section 116.150(a) is proposed to be revised to require an applicant to submit contemporaneous netting calculations (de minimis threshold test) where the project has an increase in emissions of greater than five tpy and there is a net project emissions increase.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of NO_x NNSR.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be reductions of NO_x, ozone, and other air pollutants. This rulemaking would affect new major stationary sources of NO_x or major modifications in the HGA and BPA areas as well as in areas that are nonattainment for pollutants other than ozone. The commission cannot estimate the cost per facility for compliance with the amendment due to wide variability of project costs. This amendment does add flexibility by allowing certain NNSR projects to substitute less costly BACT for LAER.

DRAFT REGULATORY IMPACT ANALYSIS. The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because, while meeting the definition of

a "major environmental rule" as defined in the Code, it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these sections under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these amendments is to remove an existing waiver for NO_x new source review. If adopted, sources located in ozone nonattainment areas of the state will be subject to a review of their NO_x emissions and possibly new control measures. However, there is no restriction or taking of private real property associated with these proposed amendments.

COASTAL MANAGEMENT PLAN. The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. Adoption of these proposed amendments should result in reductions of ambient NO_x and ozone concentrations.

PUBLIC HEARING. A public hearing on this proposal will be held January 20, 1998, at 10:00 a.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97182-116-AI. Comments must be received by 5:00 p.m., January 20, 1998. For further information or questions concerning this proposal, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter A. Definitions

30 TAC §116.12

STATUTORY AUTHORITY. The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.012, 382.051, and 382.054, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.012 and §382.051(d).

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions [~~General Rules~~]), the following words and terms, when used in the undesignated head regarding Nonattainment Review, shall have the following meanings, unless the context clearly indicates otherwise.

Contemporaneous period-As follows.

(A) For major sources with the potential to emit 250 tpy or more of a nonattainment pollutant, the period between:

(i) [~~the date five years before construction on the particular change commences or~~] November 15, 1992 [~~, whichever date is earlier~~]; and

(ii) (No change.)

(B)-(C) (No change.)

De minimis threshold test (netting)-A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I (in tpy) for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

Major modification-Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which an NAAQS has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I. A physical change or change in the method of operation shall not include:

(A)-(F) (No change.)

(G) any change in ownership at a stationary source.

Figure: 30 TAC §116.12, definition of Major modification, subparagraph (G)

Offset ratio-For the purpose of satisfying the emissions offset reduction requirements of the FCAA [~~Federal Clean Air Act~~], §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification. Offsets must meet the creditability criteria established in §101.29 of this title (relating to Emissions Banking and Trading).

Project net-The sum of the following: the total proposed increase in emissions resulting from a physical change or change in the method of operation at a stationary source, minus any sourcewide creditable actual emission decreases proposed at the source between the date of application for the modification and the date the resultant modification

begins emitting. Increases and decreases must meet the creditability criteria listed under the "Net emissions increase" definition of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716446
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 239–1966

♦ ♦ ♦

Subchapter B. New Source Review Permits

30 TAC §§116.150, 116.151

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.012, 382.051, and 382.054, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.012 and §382.051(d).

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas [~~Area~~].

(a) This section applies to administratively complete applications submitted [~~received~~] on or after November 15, 1992 for new construction or modification of facilities located in any area designated as nonattainment for ozone in accordance with the FCAA, §107. [~~Applications filed before November 15, 1992, shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991.~~] The owner or operator of a proposed new or modified facility which will be a new [~~is a~~] major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing major stationary source of VOC or NO_x emissions that will undergo a major modification with respect to VOC or NO_x, shall meet the requirements of paragraphs (1)-(4) of this subsection, except as provided in subsection (b) of this section [~~which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (FCAA), §107, shall meet the additional requirements of paragraphs (1)-(4) of this subsection, except as provided for in subsections (b) and (c) of this section~~]. Table I of §116.12 of this title (relating to Nonattainment Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. Except as noted in subsection (b) of this section regarding NO_x, the de minimis threshold test (netting) shall be required for all modifications to existing major sources of VOC or NO_x, unless at least one of the following conditions are met: the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year of the individual nonattainment pollutant or, the project emissions increases coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tons per year. [~~The de minimis threshold test shall be required for proposed VOC emissions increases that equal or exceed five tons per year in moderate, serious, and severe ozone nonattainment areas, and for NO_x emissions increases that equal or exceed 40 tons per year in moderate serious, and severe ozone nonattainment areas.~~] In applying the de minimis threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission [~~emissions~~] rate (LAER) as defined in §116.12 of this title [~~(relating to Nonattainment Review Definitions)~~] for the nonattainment pollutants [~~nonattaining pollutant~~] for which the facility is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tons per year of the applicable nonattainment pollutant. For these sources, Best Available Control Technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new emission [~~emissions~~] unit and to each existing emission [~~emissions~~] unit at which the [~~a~~] net emissions increase will occur as a result of a physical change or change in method of operation of the emissions unit.

(2) (No change.)

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title [~~(relating to Nonattainment Review Definitions)~~] and shown in Table I of §116.12 of this title. Internal offsets which are generated at the source and which otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources with a PTE of less than 100 tons per year of an applicable nonattainment pollutant are not required to undergo Nonattainment New Source Review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources with a PTE of greater than or equal to 100 tons per year of an applicable nonattainment pollutant can substitute BACT for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) (No change.)

(b) For sources located in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant counties) or in the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO_x emissions.

(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange counties), the following shall apply to NO_x emissions.

(1) (No change.)

(2) The commission has reviewed [~~Commission will review, during the years 1996 and 1997,~~] the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). The commission has determined [~~If the Commission determines~~] that additional NO_x reductions in the HGA and BPA nonattain-

ment areas will [area would] contribute to attainment of the National Ambient Air Quality Standards for ozone . The commission [in that nonattainment area, the Commission] will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance has ended [shall end]. The source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000. [On or after January 1, 1998, the Commission pursuant to a formal rulemaking proceeding may require sources in the HGA and BPA nonattainment areas who file an application after January 1, 1998, to comply with the requirements of subsection (a)(1)-(4) of this section.]

§116.151. New Major Source or Major Modification in Nonattainment Areas [Area] Other Than Ozone.

This section applies to administratively complete applications submitted [received] on or after November 15, 1992 for new construction or modification of facilities located in a designated nonattainment area for an air contaminant other than ozone. [Applications filed before November 15, 1992, shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991.] The owner or operator of a proposed new or modified facility which will be a new major stationary source for that nonattainment air contaminant, or the owner or operator of an existing major stationary source that will undergo a major modification with respect to that nonattainment air contaminant, shall meet the additional requirements of paragraphs (1)-(4) of this section [facility in a designated nonattainment area for an air contaminant other than ozone, which will be a new major stationary source or a major modification for that nonattainment air contaminant, must meet the additional requirements of paragraphs (1)-(4) of this section regardless of the degree of impact of its emissions on ambient air quality]. Table I of §116.12 of this title (relating to Nonattainment Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title [(relating to Nonattainment Review Definitions)] for the nonattainment [nonattaining] pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new emission [emissions] unit and to each existing emission [emissions] unit at which the [a] net emissions increase will occur as a result of a physical change or change in [the] method of operation of the [emissions] unit.

(2) All major stationary sources owned and [or] operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limits [limitations] and standards.

(3) At the time the new or modified facility or facilities commence operation, the emission [emissions] increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title [(relating to Nonattainment Review Definitions)] and shown in Table I of §116.12 of this title.

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716447
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 239–1966

♦ ♦ ♦

Chapter 205. General Permits for Waste Discharges

Subchapter A. General Permits for Waste Discharges

30 TAC §§205.1–205.6

The Texas Natural Resource Conservation Commission (commission) proposes new Chapter 205, §§205.1-205.6, relating to general permits for waste discharges.

EXPLANATION OF THE RULE

This new chapter is proposed to implement amended Texas Water Code, §26.040, which became law as an act of the 75th Texas Legislature (1997). The proposed rule describes the procedures the commission will use to develop and issue general permits as well as the procedures to authorize discharges under the terms of any general permit. These permits may supersede some authorizations by rule currently utilized by the commission, and will offer an alternative to individual permits for eligible dischargers. Current authorizations-by-rule will remain in effect until expressly superseded by commission action.

General permits may cover discharges in one geographical area or may cover a category of discharges statewide. The rule will specify that general permits may be issued for categories of dischargers that engage in the same or similar types of operations, discharge the same types of waste, are subject to the same effluent limitations and/or operating conditions, and are subject to the same or similar monitoring requirements. The category of discharges covered by a general permit will not include discharges of pollutants that will cause significant adverse effects to water quality nor would any general permit allow a discharge of more than 500,000 gallons into surface water during any 24-hour period as provided by §26.040.

Proposed new §205.1 (relating to Definitions) contains definitions of key terms used in this chapter. Proposed new §205.2 (relating to Purpose and Applicability) describes the authority of the commission in issuing general permits, consistent with §26.040 of the Texas Water Code. General permits issued by the commission must protect water quality as identified in any site-specific study that indicates effluent limits more stringent than those contained in an applicable general permit. Proposed new §205.3 (relating to Public Notice, Public Meetings, and Public Comment) specifies the public participation processes the commission will use to receive, analyze, and respond to public comment on each general permit. The section also contains requirements for newspaper publication of notices, mailed notice, receiving oral and written public comment, and commission response to public comment.

Proposed new §205.4 (relating to Authorizations and Notices of Intent) describes the notification and authorization procedures applicable to any discharger seeking coverage under a general permit. This section describes the method under which a

discharger may seek coverage under a general permit. The section describes the criteria the executive director will use to deny or suspend coverage under a notice of intent.

Proposed new §205.5 (relating to Permit Duration, Amendment and Renewal) establishes the term of general permits, and the procedures for permit renewals for amending the requirements and/or limitations of a general permit.

Proposed new 205.6 (relating to Annual Fee Assessments) provides that the commission shall impose an annual assessment on a discharger in accordance with §§305.501-305.507 of this title (relating to the Waste Treatment Inspection Fee Program) and in accordance with §320.21 of this title (relating to Water Quality Assessment Fees).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect of the proposed sections will be to regulate by general permit rather than by individual permit certain wastewater treatment facilities. The effect on state government will be a reduction in those costs typically incurred by the commission that are associated with the review and approval of individual permit applications. Under the proposed regulations, fewer staff resources will be required to process requests for discharge authorization than would be necessary for the processing of individual permit applications from each entity depending on the scope of any given general permit. No significant change is anticipated for those costs associated with monitoring and compliance activities. While a net cost savings is anticipated, the actual number of facilities that will elect to apply for authorization under the proposed general permit cannot be determined. The total cost savings, therefore, has not been estimated.

There are no additional costs anticipated for local governments. Consistent with the proposed rule, many local governments could take advantage of future development of general permits which would cover domestic wastewater treatment facilities. The cost savings to these political subdivisions will be equivalent to those savings realized by any applicant qualifying for an authorization by general permit rather than being subject to individual permit requirements. Moreover, owners or operators of facilities qualifying for authorization by general permit will potentially realize savings related to the costs of preparing permit applications and participating in the approval process. These savings may also result from a decreased need for legal services related to public hearings and may also include a time savings from the accelerated and streamlined approval process. These savings will vary on a case-by-case basis depending on the particular facility, its size and complexity, and the extent to which it qualifies under a future general permit. These savings cannot be determined exactly. It is anticipated, however, that savings of $2,000 to $5,000 will be typical of most facilities, while savings of up to $25,000 could potentially be available in some circumstances. The minimum savings realized by affected parties is anticipated to be approximately $1,000. The savings to businesses will apply equally to small businesses as well as to larger operations based on these factors.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with these sections will consist of improvements in the processes and procedures related to authorization of wastewater discharges, more efficient use of the public resources available for regulation of wastewater facilities, more cost-effective regulation of wastewater discharges, and improved protection of the quality of the surface water resources of the state. There are no economic costs anticipated for any individual, including any small business, required to comply with the sections as proposed.

REGULATORY IMPACT ASSESSMENT

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to implement House Bill 1542 which amended Texas Water Code §26.040 to authorize the commission, under limited circumstances, to issue general permits authorizing the discharge of waste. The specific purpose of the legislation was to ease the burden on the commission and the regulated community by allowing the issuance of general permits in place of individual permits while still providing protection to human health and the environment. The rule will advance this specific purpose by providing a process for the commission to adopt general permits authorizing certain waste discharge activities which qualify for regulation by general permit, rather than by individual permit, under the parameters set out in the legislation. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rules because the rules will not involve a physical invasion, dedication, or exaction of real property which is the subject of the rules, will not restrict or limit a property right that would otherwise exist, and will not eliminate all economic uses of private property which is the subject of the rules.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), or will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rule are the protection, preservation, restoration and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the requirement that discharges of municipal and industrial wastewater in the coastal zone shall

comply with water-quality-based effluent limits. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will result in more efficient and cost-effective use of public resources regulating wastewater facilities, while maintaining protection of the quality of the surface water resources of the state.

The commission invites public comment on the consistency of the proposed rule.

PUBLIC HEARING

A public hearing will be held January 14, 1997, at 10:00 a.m. in Room 5108 of commission building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comment by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97151-205-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., January 23, 1997. For further information concerning this proposal, please contact Thomas W. Weber, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-4554.

STATUTORY AUTHORITY

These sections are proposed under the Texas Water Code, §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission.

Additionally, these sections are proposed pursuant to the Texas Water Code, §26.040, which provides the commission with the authority to regulate certain waste discharges by general permit. SUBCHAPTER A : GENERAL PERMITS FOR WASTE DISCHARGES §§205.1-205.6 These sections are proposed under the Texas Water Code, §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission. Additionally, these sections are proposed pursuant to the Texas Water Code, §26.040, which provides the commission with the authority to regulate certain waste discharges by general permit.

§205.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

General permit - A permit issued under the provisions of this chapter authorizing the discharge of waste into or adjacent to waters in the state for a category of waste discharges within a geographical area of the state or the entire state as provided by §26.040, Texas Water Code.

Individual permit- A permit, as defined in §26.001 of the Texas Water Code, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in Chapter 26 of the Texas Water Code (other than §26.040 of the Water Code) .

Notice of intent or NOI - A written submittal to the executive director from a discharger requesting coverage under the terms of a general permit.

Same or similar monitoring requirements- Requirements for periodic testing or sampling applied to all dischargers covered by a general permit to determine compliance with effluent limitations in general permits which can be applied with the same or similar frequency, sample type, or reporting requirements. This may include conditions which are applied in accordance with a distinct formula in the general permit, such as a sampling frequency based upon the quantity or rate of discharge.

Same or substantially similar types of operations- A defined category of facilities generating wastewater from a similar source. Examples of similar types of operations include manufacturing processes relating to a specific industrial category or standard industrial classification, a specific type of agricultural production activity, publicly owned treatment works, or storm water management and control activities by municipalities .

Same requirements regarding effluent limitations - Permit requirements applied to all dischargers covered by a general permit for physical measurement of the characteristics of a discharge specified in the general permit, such as temperature, quantity or analytical measurements of particular pollutants by concentration or total loading .

Same requirements regarding operating conditions- Requirements applied to all dischargers covered by a general permit including, but not limited to, requirements for maintenance, monitoring, reporting, best management practices, facility management, the integrity of analytical testing, and record keeping.

Same types of waste- A category of waste containing the same or similar type constituents that is generated or treated by the same or substantially similar types of operations, that can be safely and appropriately controlled using a similar treatment technology, or that can be safely and appropriately controlled through the same requirements regarding effluent limitations . Examples of such waste types include domestic wastewater, contact stormwater from concrete batch operations, or filter backwash from water treatment.

Texas Pollutant Discharge Elimination Systems (TPDES)- The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Clean Water Act §§307, 402, 318 and 405, the Texas Water Code and Texas Administrative Code regulations.

§205.2. Purpose and Applicability.

(a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to waters in the state by category of dischargers if the dischargers in the category:

(1) engage in the same or substantially similar types of operations;

(2) discharge the same types of waste;

(3) are subject to the same requirements regarding effluent limitations or operating conditions; and

(4) are subject to the same or similar monitoring requirements.

(b) The commission may issue a general permit to authorize the discharge of waste by categories of dischargers designated pursuant to subsection (a) of this section either within the entire state or within a discrete geographical area identified by an appropriate division or combination of geographic or political boundaries. For example, certain dischargers of the same type of waste may be covered under one statewide general permit. General permits granted for discrete geographical areas may be based upon, but not limited to, factors such as related water quality standards, climatological conditions, and watershed specific standards in accordance with Chapter 311 of this title (relating to Watershed Protection). Discharges to be regulated with effluent limitations specific to a particular water body may be covered under a general permit limited to a particular watershed or geographical area.

(c) The commission may issue a general permit when it finds the dischargers in the category are more appropriately regulated under a general permit than under individual permits, on the basis that both:

(1) the general permit can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit. This requirement is satisfied if the provisions of the general permit are clear and unambiguous and that it requires adequate monitoring, record keeping, and reporting, appropriate to the type of activity authorized; and

(2) the category of discharges covered by the general permit will not include a discharge either of pollutants that will cause significant adverse effects to surface and ground water quality or of more than 500,000 gallons directly to surface water during any 24-hour period.

§205.3. Public Notice, Public Meetings, and Public Comment.

(a) The commission shall publish notice of a draft general permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit and in the *Texas Register*. If the draft general permit will have statewide applicability, then the requirement for newspaper notice shall be accomplished by publishing notice in the daily newspaper of largest general circulation within each of the following metropolitan areas: Dallas; Houston; San Antonio; Austin; Tyler; Corpus Christi; the Lower Rio Grande Valley; Amarillo; Lubbock; the Permian Basin; and El Paso.

(b) For TPDES general permits, mailed notice of the draft general permit will also be provided in accordance with §39.7 of this title (relating to Mailing Lists) and §39.13(2), (3), (7), and (8) of this title (relating to Mailed Notice).

(c) The contents of a public notice of a draft general permit shall be in accordance with §39.11 of this title (relating to Text of Public Notice) except where clearly not applicable. Each notice must include an invitation for written comments by the public regarding the draft general permit. The public notice will specify a comment period of at least thirty (30) days and the public notice will be published not later than the thirtieth (30th) day before the commission considers the approval of a general permit. Additionally, the public notice of a draft TPDES general permit must include either a map or description of the permit area.

(d) Public Meetings.

(1) The executive director or commission may hold a public meeting to provide an additional opportunity for public comment, or when it finds, on the basis of requests, a significant degree of public interest in a draft general permit.

(2) The commission shall give notice of a public meeting under this subsection by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

(3) For TPDES general permits, mailed notice of the public meeting will also be provided in accordance with §39.7 of this title (relating to Mailing Lists) and §39.13(2), (3), (7), and (8) of this title (relating to Mailed Notice). The contents of a public notice of a public meeting shall be in accordance with §39.11 of this title (relating to Text of Public Notice) except where clearly not applicable. Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(4) The public comment period shall automatically be extended to the close of any public meeting.

(e) If the commission receives public comment during the comment period relating to issuance of a general permit, the commission may issue the general permit only after responding in writing to these comments. The response shall address written comments received during the comment period and oral or written comments received during any public meeting held by the commission.

(1) The commission shall issue its written response to comments on the permit at the same time the commission issues or denies the permit.

(2) A copy of any issued permit and response to comments will be made available to the public for inspection at the commission's Wastewater Permits Section in its Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register* .

§205.4. Authorizations and Notices of Intent.

(a) New Permittees. A discharger who is not covered by an individual permit may submit to the executive director a written notice of intent to be covered by the general permit in accordance with this section. The executive director may deny the request for coverage under the general permit, in accordance with subsection (e) of this section.

(b) Existing Individual Permittees.

(1) A discharger who is covered by an individual permit may obtain substitute authorization to discharge waste under a general permit if, at least 180 days prior to the expiration date of the individual permit, the permittee submits a notice of intent as specified by subsection (f) of this section along with a request that the individual permit be canceled, and the executive director does not deny the NOI under subsection (e) of this section.

(2) The individual permit will be automatically canceled when authorization under the general permit becomes effective.

(3) If the NOI is denied under subsection (e) of this section, the discharger shall apply for renewal of the individual permit prior to the expiration date of the individual permit to maintain authorization to discharge, in accordance with §305.63 of this title (relating to Renewal).

(c) A general permit will specify any applicable deadline for filing the notice of intent. A discharger may begin discharging under the general permit on the 31st day after the executive director receives the discharger's notice of intent unless the executive director before that time notifies the discharger pursuant to subsection (e) of this section that the discharger is not eligible for authorization under the general permit. Any NOI must be submitted to the executive director by certified mail, return receipt requested.

(d) Authorization to discharge under a general permit does not confer a vested right. After written notice to the discharger, the executive director may suspend a discharger's authority to discharge under a general permit and may require a person discharging under a general permit to either cease the discharge and/or obtain authorization to discharge under an individual permit. The notice of suspension to such a person shall include a brief statement of the basis for this decision under subsection (e) of this section, an application form, a statement setting the deadline for filing the application for an individual permit, and a statement that the person's discharge authorization under the general permit shall be suspended on the effective date of the commission's action on the individual permit application unless the commission expressly provides otherwise. If an application is not received by the deadline specified, the executive director shall suspend a discharger's authority to discharge under a general permit.

(e) The executive director shall deny an NOI or suspend a discharger's authorization under a general permit, and require the discharger to either cease the discharge and/or apply for and obtain an individual permit if the discharger is not eligible for authorization under the general permit for reasons including, but not limited to, the following:

(1) The owner and/or the operator of the facility has not filed a notice of intent in accordance with §305.43 of this title (relating to Who Applies);

(2) The quantity of discharge, the type of waste, or the type of operation does not comply with the general permit;

(3) In the case of determining eligibility to discharge under the Texas Pollutant Discharge Elimination System (TPDES), a determination that backsliding under 40 CFR §122.44(l) would occur if the general permit would be substituted for the individual permit;

(4) Circumstances have changed since the time of the NOI so that the discharge is no longer of sufficient quantity to meet applicable water quality standards under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(5) The discharge is a significant contributor of pollutants impairing the quality of surface or ground water in the state. In making this determination, the executive director may consider the following factors:

(A) The location of the discharge;

(B) The size of the discharge;

(C) The quantity and nature of pollutants discharged;

(D) Other factors relating to the protection of water quality standards;

(6) The discharger has been determined by the commission to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the commission;

(7) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the discharge necessary to be implemented to meet applicable federal or state standards;

(8) Specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit; or

(9) The discharge would be inconsistent with the state Water Quality Management Plan.

(f) The content of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner and operator, the facility name and address, specific description of its location, type of facility or discharges, and the receiving water(s). A NOI shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(g) A person seeking authorization by general permit shall submit an application fee payable to the commission at the time of filing a notice of intent. The amount of the fee shall be set in accordance with §305.53 of this title (relating to Application Fee) and will be specified in each general permit and NOI form. If a person is denied coverage under the general permit in accordance with subsection

(e) of this section, the application fee will be applied to any application fee required for any individual permit application for the same discharge .

(h) A person authorized to discharge waste under a general permit must submit up-to-date information to the executive director in a new NOI not later than 10 days prior to a change in previous information provided to the commission or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. When the owner or operator of the facility changes or has been transferred, a new NOI must be submitted not later than 10 days prior to the transfer.

§205.5. Permit Duration, Amendment, and Renewal.

(a) A general permit may be issued for a term not to exceed five years. After notice and comment as provided by §205.3 of this title (relating to Public Notice, Public Meetings, and Public Comment), a general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed five years each.

(b) A general permit remains in effect until amended, revoked, or canceled by the commission or, unless renewed by the commission, until it expires. If the agency publishes notice of a proposed renewal permit in accordance with §205.3 of this title before the permit expiration date, or if the agency publishes a notice that it has administratively continued the effectiveness of the existing permit pending completion of a draft revised permit, a general permit remains in effect after the expiration date. The general permit will not expire until commission action on the proposed renewal permit is final.

(c) Except as otherwise specified in a general permit, facilities are authorized to discharge under an expiring general

permit beyond the expiration date of the general permit in the event commission action under subsection (b) of this section extends it past the expiration date. Upon issuance of a renewal general permit, the facility shall submit a notice of intent in accordance with the requirements of the new permit.

(d) If the commission does not renew a general permit, it will provide such determination prior to the expiration of the general permit, and each discharger authorized under the general permit will be provided written notice that the discharger must apply for an individual permit in accordance with §205.4(d) of this title (relating to Authorizations and Notices of Intent). An applicant for an indvidual permit must submit the application prior to the expiration date of the general permit in order to maintain authorization to discharge under the general permit.

(e) The commission may, through renewal or amendment of a general permit, add or delete requirements or limitations to the permit. The commission may provide in the general permit a reasonable time to allow existing dischargers covered by the general permit to make the changes necessary to comply with any additional requirements deemed substantive by the commission.

§205.6. Annual Fee Assessments.

A person authorized by a general permit shall pay: an annual waste treatment inspection fee under Texas Water Code, §26.0291 consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program); and an annual watershed monitoring and assessment fee under Texas Water Code, §26.0135(h) consistent with §320.21 of this title (relating to Water Quality Assessment Fees).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716425
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 239–4640

♦ ♦ ♦

Chapter 321. Control of Certain Activities by Rule

Subchapter I. Additional Characteristics and Conditions of General Permits and For Controlling Certain Activities By Rule

30 TAC §321.141

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Chapter 321, Subchapter I, §321.141 concerning Additional Characteristics and Conditions for Controlling Certain Activities by Rule.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed rule is to implement amended Texas Water Code, §26.040, which became law as an act of the 75th Legislature (1997). The proposed rule amendment revises Chapter 321, Subchapter I, to reflect the new authority of the commission to authorize certain discharges by general permit, rather than through permit by rule. The amendments also revise the rule to add a reference to new 30 TAC Chapter 205 (relating to General Permits) being established simultaneously with this rulemaking.

FISCAL NOTE

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications for state and local units of government as a result of administering the section.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcement of and compliance with this section will be an accurate reference of state regulations in the Texas Administrative Code regarding control of certain activities by rule and general permits. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

REGULATORY IMPACT ASSESSMENT

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The specific purpose of the rule is to update Chapter 321, Subchapter I to reflect the authority of the commission to issue general permits. The rule amendment will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program. The proposed rule does not govern any of the actions that must be subject to the goals and policies of the program, pursuant to 31 TAC §505.11.

PUBLIC HEARING

A public hearing will be held January 14, 1997, at 10:00 a.m. in Room 5108 of commission building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comment by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97151-205-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., January 23, 1997. For further information concerning this proposal, please contact Thomas W. Weber, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-4554.

STATUTORY AUTHORITY

These sections are proposed under the Texas Water Code, §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission.

Additionally, these sections are proposed pursuant to the Texas Water Code, §26.040 which provides the commission with the authority to regulate certain waste discharges by general permit.

§321.141. Additional Characteristics and Conditions for General Permits and Control of Certain Activities by Rule.

40 Code of Federal Regulations §122.28, as in effect on the date of TPDES program authorization, as amended, is adopted by reference, except 40 Code of Federal Regulations §122.28, subsections (b)(3) (ii) and (c), and except as follows: Where 40 Code of Federal Regulations §122.28 refers to a "general permit" or an "NPDES permit," the references are more properly made, for state law purposes, to a "permit by rule," a "general permit" or a "TPDES permit," as applicable. Where §122.28(b)(3)(iii) refers to 40 Code of Federal Regulations §122.21, the reference is more properly made, for state law purposes, to applicable sections of Chapters 205, 281 and 305, of this title. [~~or a "TPDES permit," respectively. Where §122.28(b)(iii) refers to 40 Code of Federal Regulations §122.21, the reference is more properly made, for state law purposes, to applicable sections of 31 Texas Administrative Code Chapters 281 and 305.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716424
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 239–4640

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 51. Executive

Nonprofit Organizations

31 TAC §51.164

The Texas Parks and Wildlife Department proposes amendment of §51.164, concerning Gifts to the Department. Senate Bill 145 passed by the Seventy-fifth Legislature provides specific direction to state agencies regarding the acceptance of gifts. The Act provides that all gifts of money or property with a value of $500 or more must be accepted by the Commission in an open meeting. The Act further states that the name of the donor, a description of the gift and a statement of the purpose of the gift must be recorded in the minutes of the meeting.

Proposed amendments to §56.164 include expressed provision that any gift to the department in excess of $500 must be accepted contingent upon Commission approval. Gifts to the Department in an amount less than $500 may be accepted by specific employees designated by the department of be the facility manager if the gift is earmarked for a specific department facility. Gifts in the range of $499-$5,000 may be accepted by the appropriate Department Division Director, contingent upon Commission approval and gifts in excess of $5,000 may be contingently accepted by the Executive Director.

Jim Dickinson, Special Projects Director, has determined that for each of the first five years the amendment rules as proposed are in effect, there will be no additional fiscal implications for state or local governments.

Mr. Dickinson also has determined that for each of the first five years the amended rule as proposed is in effect the public will first benefit from the use of funds in continuing current levels of service and also in improved public information and knowledge concerning donations to the Department.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedure Act, Government Code §2001.022, as this agency has determined that the repealed rules as proposed will not impact local economies.

Comments on the proposed amendment may be submitted to Jim Dickinson, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4417 or 1-800-792-1112, extension 4417.

The amendment is proposed under Parks and Wildlife Code, §11.026 which provides authority for the department to accept gifts of property or money in support of any department purpose authorized by the Parks and Wildlife Code.

The proposed amendment affects Parks and Wildlife Code, §11.026.

§51.164. Gifts to the Department.

(a) Gifts of money or property $500 or more in value must be accepted contingent upon Commission approval. The department may not accept or receive gifts or bequests from any source until such gifts or bequests have been approved for acceptance by the executive director or his delegate [~~delegee~~]. Acceptance of gifts is hereby delegated as follows.

(1) Gifts or improvements valued at $499.99 [~~$1,000~~] or less and intended to aid a specific division or facility of the department may be approved for acceptance by the manager of the

facility affected by the gift or other employees designated by the executive director.

(2) Gifts or improvements valued at greater than $499.99 [~~$1,000~~] and less than or equal to $5,000 may be contingently accepted [~~approved for acceptance~~] by the division director responsible for the facility affected by the gift or use of the gift.

(3) Gifts or improvements valued at greater than $5,000 and all gifts of real property or interests in real property must be contingently accepted [~~approved for acceptance~~] by the executive director.

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716366
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

Chapter 55. Law Enforcement

Subchapter K. Mandatory Boater Education Program

31 TAC §§55.701, 55.703, 55.705, 55.707

The Texas Parks and Wildlife Department proposes new §§55.701, 55.703, 55.705 and 55.707, concerning Mandatory Boater Education Program. The new law was passed in the 75th Legislature under Chapter 31 Water Safety, Parks and Wildlife Code.

Proposed new §55.701 establishes guidelines for the department to administer the mandatory boater education program. New §55.703 sets the minimum age for certification at 12 years of age. New §55.705 establishes one new exemption to certification as authorized by Parks and Wildlife Code, §31.108. New §55.707 sets an effective date of March 1, 1998.

Steve Hall, Education Director, has determined that for the first five year period the rules will be in effect the cost to state government in implementing the boater education program will be $350,000 per year. There are no anticipated costs to local government.

Mr. Hall also has determined that for each of the first five years the rules as proposed are in effect the public benefit as a result of the new rules will be greater boating safety awareness, reduced boating accidents and fatalities; and reduced water safety act violations

The effect on small businesses and individuals required to comply with the rules as propsed is the potential for some individuals to be involved as agents or volunteers on behalf of the state boating safety efforts.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed new rules may be submitted to Steve Hall, Education Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568, 1-800-792-1112, extension 4568, or steve.hall@tpwd.state.tx.us.

The new sections are proposed under Parks and Wildlife Code, §§31.108-31.110, which mandate and authorize the Commission to establish a statewide boater (safety) education program.

The proposed new sections affects Parks and Wildlife Code, §§31.108- 31.110.

§55.701. Boater Education Program.

(a) All courses approved for certification must be approved by the department using minimum national standards as means of approval.

(b) Courses shall consist of the following subjects:

(1) Boats - boat uses, capacities, trailering, equipment, numbering, titling;

(2) Boating safety - accident causes, prevention and emergency procedures;

(3) Boating operation- preparation, float plans, navigation rules, navigation aids, local hazards and weather; and

(4) State laws - Texas Water Safety Act, Boating While Intoxicated (BWI) Laws, violation prevention and basic boating responsibilities.

(c) The course is successfully completed when the student:

(1) attends at least 6 hours of training;

(2) is evaluated by the instructor as acceptable in attitude, knowledge and skill; and

(3) scores a minimum of 70 percent on a course exam prescribed by the department.

(d) In lieu of a course, a person may complete an equivalency exam process consisting of a multiple-choice exam proctored by an agent appointed by the department or accessed through a department-sponsored web site.

(1) Home study and equivalency exam passage shall be set at a minimum 80 percent passing score.

(2) A person who fails the exam may retake it one time at least 24 hours after the time of first completion.

(e) The department shall:

(1) train and certify boater education instructors upon completion of an application, game warden interview and proof of student and instructor course completion;

(2) administer all records of certifications; and

(3) approve the standard form for a boater education identification to be issued to a person who successfully completes a boater education course or equivalency exam.

§55.703. Boater Education Requirements.

Minimum age for certification is 12 years of age.

§55.705. Boater Education Exemptions.

In addition to those exemptions established in Parks and Wildlife Code §31.110, and authorized in §31.108 (b), persons who have successfully completed a "voluntary boater education course" previously administered or approved by the department are exempt from the requirements established in this subchapter.

§55.707. Effective Date.

The effective date of this action shall be March 1, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716364
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

Chapter 57. Fisheries

Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants

31 TAC §57.112, §57.113

The Texas Parks and Wildlife Department (TPWD) proposes amendments to §57.112 and §57.113,concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants.

Amendments to §57.112 will make it an offense to harvest grass carp from public water for which a valid Triploid Grass Carp Permit is currently in effect.

Amendments to §57.113 stipulate that individuals may possess exotic harmful or potentially harmful fish or shellfish, other than grass carp, if the intestines have been removed. Further, amendments to §57.113 stipulates that grass carp may be harvested from public waters that have not been permitted for triploid grass carp, if the intestines have been removed.

Mr. Robin Riechers, staff economist, has determined that during the first five years these sections as proposed are in effect: there will be minimal fiscal implications to state government as a result of administering and enforcing the sections. There will be no fiscal implications for units of local government.

Mr. Riechers also has rmined that for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be increased control of exotic aquatic weeds. Entities, such as river authorities, water districts, private property owners, etc., which bear the cost of aquatic vegetation control may experience financial savings as a result of grass carp used versus other, more expensive forms of vegetation control. Additional costs may be incurred by entities or individuals who must comply with these rules.

TPWD has not filed a local impact statement with the Texas Employment Commission as this agency has determined that the sections as proposed will not impact local economies.

TPWD has not prepared a Takings Impact Assessment for these rules because Government Code §2007.003 provides an exception to the requirement for rules or proclamations adopted for the purpose of regulating or controlling nonindigenous or exotic aquatic resources.

Written comments on the proposed rules may be submitted to Dr. Earl Chilton, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4652. Please fax comments to (512) 389-4388. Written comments must be received no later than 5:00 p.m. 30 days from the date of publication of this proposal in the Texas Register.

The new sections are proposed under the Parks and Wildlife Code §66.007 which prohibits possession of exotic harmful or potentially harmful shellfish except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of the animals and authorizes the department to make rules to carry out these provisions.

Parks and Wildlife Code §66.007 is affected by the proposed amendment.

§57.112. General Rules.

(a)-(b) No change.

(c) It is an offense to possess grass carp taken from public waters for which a valid Triploid Grass Carp Permit is currently in effect.

(d) [~~(c)~~] Violation of any provision of a permit issued under these rules is a violation of these rules.

§57.113. Exceptions.

(a) (No change.)

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the intestines of the fish or shellfish have been removed.

(c) A person may possess grass carp harvested from public waters that have not been permitted for triploid grass carp, without a permit, if the intestines have been removed.

(d) [~~(c)~~] A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell triploid grass carp (ctenophary-ngodonidella), silver carp (Hypophthalmicthys molitrix), black carp (Mylophryngodon piceus, also commonly known as snail carp), bighead carp (Aristichthys/ Hypophthalmicthys nobilis), Japanese eel (Anguilla japonicus), blue tilapia (Tilapia aurea), Mozambique tilapia (Tilapia mossambica), Nile tilapia (Tilapia nilotica), or hybrids between the three tilapia species, as provided by conditions of the permit and these rules.

(e) [~~(d)~~] A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (Penaeus vannamei) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(f) [~~(e)~~] An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport waterhyacinth (Eichornia crassipes) to their facility only for the purpose of wastewater treatment.

(g) [~~(f)~~] A person may possess Mozambique tilapia in a private pond subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(h) [~~(g)~~] The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.

(i) [~~(h)~~] A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1)-(2) (No change.)

(j) [~~(i)~~] The department is authorized to stock planktivorous fish including silver carp (Hypophthalmichthys molitrix) and bighead carp (Aristichthys/Hypophthalmichthys nobilis) if necessary in Lake Rita Blanca, Hartley County, in order to investigate their utility as biological agents to improve water quality and enhance fishery management.

(k) [~~(j)~~]The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

(l) [~~(k)~~] A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (Penaeus sylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716361
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

Chapter 65. Wildlife

Subchapter K. Raptor Proclamation

The Texas Parks and Wildlife Department proposes the repeal of §§65.262-65.265, 65.267-65.269, 65.271, 65.276, and new §§65.262-65.265, 65.267, 65.269, 65.271, 65.276, and 65.277, concerning regulations for the take, capture, and possession of raptors. The repeals and new sections are necessary to implement statutory provisions enacted by the 75th Texas Legislature in House Bill 2542. The new sections will function to eliminate numerical restrictions and reporting requirements for educational display of raptors; allow the purchase and sale of captive-bred raptors; institute a nonresident trapping permit; and set open seasons and bag limits for hunting game birds (except migratory game birds, which are subject to federal management frameworks) and game animals by means of falconry.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the repeals and new sections as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the repeals and new sections.

Mr. Macdonald also has determined that for each of the first five years the repeals and new sections are in effect, the public benefit anticipated as a result of enforcing the repeals and new sections as proposed will be the elimination of unnecessary regulatory presence and an increased opportunity for citizens to utilize the wildlife resources of the state.

There will be no effect on small businesses. There is an additional economic cost to persons required to comply with the repeals and new sections as proposed, due to the introduction of the $300 nonresident trapping permit. However, because nonresidents have never been permitted to trap raptors in Texas, the department has no historical data from which to estimate the number of persons who might be affected.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the repeals and new sections as proposed will not impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed repeals and new sections.

Comments on the proposed rules may be submitted to Rosie Roegner, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4491 or 1-800-792-4410.

31 TAC §§65.262–65.265, 65.267–65.269, 65.271, 65.276

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals and new sections are proposed under Parks and Wildlife Code, Chapter 49, which provides the commission with authority to promulgate regulations governing the take, capture, propagation, and possession of raptors in this state.

The proposed new sections affect Parks and Wildlife Code, Chapter 49.

§65.262. Definitions.

§65.263. General Provisions.

§65.264. Applications and Permits.

§65.265. Permit Classes: Restrictions.

§65.267. Reports.

§65.268. Permit Fees.

§65.269. Trapping Seasons and Collecting Areas.

§65.271. Transfers.

§65.276. Violations and Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716426
Bill Harvey, Ph.D.

Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

31 TAC §§65.262–65.265, 65.267, 65.269, 65.271, 65.276, 65.277

The new sections are proposed under Parks and Wildlife Code, Chapter 49, which provides the commission with authority to promulgate regulations governing the take, capture, propagation, and possession of raptors in this state.

The proposed new sections affect Parks and Wildlife Code, Chapter 49.

§65.262. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

Captive bred- Raptors, including eggs hatched in captivity, from parents that mated or otherwise reproduced in captivity.

Educational display - Activities conducted for the purposes of encouraging management and conservation of raptors or furthering awareness and understanding among the general public of the biology of protected wildlife.

Eyas- a young raptor taken from the nest or still in the nest.

Holding - Retaining in captivity.

Imping - the use of a feather to replace a broken feather of a raptor.

Mew - an indoor facility for keeping a raptor.

Raptor - A live migratory bird of the Order Falconiformes or the Order Strigiformes.

Passage bird - An raptor less than one year of age that has left the nest.

Release to the wild - Release of wildlife to an area where it is capable of leaving at will.

Take - To trap or capture, or attempt to trap or capture, a wild raptor.

Weathering area - Outdoor facilities providing a raptor protection from the environment.

§65.263. General Provisions.

(a) No person shall take or possess a raptor in this state unless that person possesses valid state and federal permits to do so.

(b) Public display of raptors shall be:

(1) for educational purposes only; and

(2) shall be performed only by general or master permit holders.

(c) General and master permittees may not sponsor more than three apprentices at one time.

§65.264. Applications and Permits.

(a) All permit applications shall be made using forms supplied by the department and shall be submitted with a copy of the applicant's federal falconry permit, or a copy of the completed application for the federal falconry permit.

(b) No permit shall be issued until the applicant has passed, with a minimum score of 80, a supervised, department-administered falconry examination.

(c) When the requirements of subsections (a) and (b) of this section have been met, and the department has received the applicable fees from the applicant, the department shall forward the application to the U.S. Fish and Wildlife Service for concurrence and final processing prior to the issuance of a state permit.

(d) No state permits shall be issued until the applicant's facilities have passed an inspection conducted by a department representative.

(e) Permits may be issued for any period of time not exceeding three years from date of issuance and shall expire on June 30.

(f) The requirements of subsections (b)-(e) do not apply to applications for a nonresident trapping permit.

§65.265. Permit Classes: Restrictions.

A person who is not a resident of this state may not hold any permit issued under this subchapter other than a nonresident trapping permit.

(1) Apprentice class permittees:

(A) may possess only one of the following: American kestrel (Falco sparverius), red-tailed hawk (Buteo jamaicensis), or red-shouldered hawk (Buteo lineatus). Any red-tailed hawk or red-shouldered hawk in possession must have been captured as a passage bird; and

(B) may not replace a raptor more than once during any 12-month period.

(2) General class permittees:

(A) may not possess more than two raptors; and

(B) may not replace more than two raptors during any 12-month period.

(3) Master class permittees:

(A) may not possess more than three raptors; and

(B) may not replace more than three raptors during any 12-month period.

(4) Raptor propagator:

(A) Qualifications. An applicant for a raptor propagator permit must:

(i) be a resident of Texas;

(ii) be 18 years of age or older; and

(iii) have at least five years of experience in the practice of falconry at the apprentice level, or its equivalent.

(B) Restrictions. Raptor propagators may not possess or breed species of raptors listed as endangered unless the propagator can document proof of seven years' experience caring for and handling raptors.

(5) Nonresident trapping permittees:

(A) Qualifications: An applicant for a nonresident trapping permit must possess a license, issued by their state of residence, equivalent to the Texas general or master falconer license.

(B) Restrictions: A nonresident shall not trap more than one raptor per year in this state.

§65.267. Reports.

Permittees shall submit to the department a legible copy of any federal form or report submitted to the U.S. Fish and Wildlife Service at the same time such paperwork is forwarded to that agency.

§65.269. Trapping Seasons and Collecting Areas.

(a) The trapping season for raptors begins September 15 and ends December 31. The season for taking eyasses begins May 1 and ends June 30. A marked raptor may be retrapped at any time.

(b) Except as expressly authorized in writing by the department, raptors shall not be trapped at any time in Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, or Terrell counties.

(c) No eggs may be taken from raptor nests.

(d) Eyasses shall be taken only by a general or master falconer. No person shall take more than two eyasses during the season for taking eyasses.

(e) Only American kestrels (Falco sparverius) and great-horned owls (Bubo virginianus) may be taken when over one year old.

(f) Any raptor other than an endangered species taken under a federal depredation (or special purpose depredation) permit may be used for falconry by a general or master falconer. Endangered species taken under a depredation permit shall not be released to the wild without prior department approval of the release site.

(g) Nonresidents in possession of a valid Nonresident Trapping Permit may trap raptors from the wild according to the terms of the permit.

§65.271. Transfers and Sale.

(a) A general or master permit holder may transfer raptors to another general or master permit holder.

(b) Not more than one out-of-state transfer of a wild-trapped raptor may be made during any 12-month period by a permit holder.

(c) A general or master permit holder may buy raptors from any legal source and may sell captive-bred raptors to another general or master permit holder in this state and to persons outside the state who are authorized under federal and state law to purchase raptors.

§65.276. Open Seasons and Bag Limits.

There shall be an open season during which game animals and game birds except for migratory birds may be taken by means of falconry.

(1) Open season: September 1-August 31.

(2) Daily bag and possession limits:

(A) game animals: as specified for individual counties in Subchapter A of this chapter;

(B) game birds other than migratory birds: one per day, either sex, per raptor, and the possession limit is two per day, either sex, per raptor.

§65.277. Violations and Penalties.

(a) Any violation of Parks and Wildlife Code, a regulation of the commission, or provision of a permit shall be cause for the department, at its discretion, to deny further permit issuance.

(b) Penalties for a violation of this chapter are as provided by Parks and Wildlife Code, §49.017.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716427
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

31 TAC §§65.601–65.603, 65.605, 65.607–65.611

The amendments are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.601. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

[~~Adult deer - Any deer held in captivity on January 1 following birth.~~]

[~~Captivity - The keeping of an animal in an enclosure suitable for and capable of retaining the animal it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another animal, Texas Parks and Wildlife Code, §43.351(2).~~]

Certified Wildlife Biologist - A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's [~~fulfilled the scholastic requirements of an accredited university or college for the B.S.~~] degree or higher [~~(or an advanced degree) with major course work~~] in wildlife science, [~~or~~] wildlife management, or a related educational field; and

(B) (No change.)

[~~Department - The Texas Parks and Wildlife Department or any authorized employee thereof.~~]

[~~Director - The Executive Director of the Texas Parks and Wildlife Department.~~]

[~~Enclosure - An area of not more than 320 acres that is completely surrounded by department-approved fencing for the purposes of reducing deer to a state of captivity.~~]

Fawn - Any deer with a spotted coat.

[~~Management - The application of scientifically tested techniques to manipulate captive deer herds in a manner that they manifest desired attributes that can be applied to free-ranging deer herds.~~]

Propagation - The holding of captive [~~white-tailed deer or mule~~] deer for reproductive purposes [~~the purpose of increasing their numbers~~].

[~~Purchase Permit - A permit required of all persons to purchase or accept a live white-tailed deer or mule deer in this state.~~]

Scientific - The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting [~~white-tailed deer or mule~~] deer.

[Scientific Breeder - A person holding a valid scientific breeder's permit issued by the department, Texas Parks and Wildlife Code, §43.351(1).]

[Transport Permit - A permit required for the transport or shipment of a live white-tailed deer or mule deer by any person except a scientific breeder or his designated agent.]

Unique number- a four-digit alphanumeric identifier issued by the department to a scientific breeder for the purpose of permanently marking a deer such that the animal's history of ownership can be tracked.

§65.602. Permit Requirement and Permit Privileges.

(a) No person may possess a live deer in this state unless that person possesses a valid [A person who possesses or seeks to possess deer for scientific, propagation or management purposes must hold, prior to possession of any deer, a valid scientific breeder's] permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R [, unless that person possesses a valid permit issued under the provisions of §§57.271-57.284 of this title (relating to Scientific, Educational, and Zoological Permits) or Subchapter C of this title (relating to Permits for the Trapping, Transporting, and Transplanting of Game Animals and Game Birds)].

(b) A person who possesses a valid scientific breeder's permit may:

(1) possess deer within the permitted facility for the purpose of propagation [engage in the business of breeding deer within the facility for which the permit was issued];

(2) engage in the business of breeding legally possessed deer within the facility for which the permit was issued; [possess deer within the permitted facility for the purpose of propagation; and]

(3) sell deer that are in the legal possession of the permittee; [and]

(4) release deer from a permitted facility into the wild as provided in this subchapter; and

(5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility [onto property owned by the permit holder].

§65.603. Application and Permit Issuance.

(a) An applicant for a scientific breeder's permit shall submit the following to the department:

(1) (No change.)

(2) a breeding [management] plan which identifies:

(A)-(B) (No change.)

(3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the breeding [management] plan;

(B) the activities identified in the breeding [management] plan are adequate to accomplish the purposes for which the permit is sought; and

(C) (No change.)

(4) (No change.)

(5) the application processing fee specified in §53.8 [§65.604] of this title (relating to (Miscellaneous Wildlife Licenses and Permits [Fees]); and

(6) (No change.)

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) [the facility has been inspected and approved as specified in §65.606 of this title (relating to Inspections); and]

[(3)] the department has received the fee as specified in §53.8 [§65.604] of this title (relating to (Miscellaneous Wildlife Licenses and Permits [Fees]).

(c) A scientific breeder's permit shall be valid from the date of issuance until the immediately following March 31. Permit and renewal fees for permits issued prior to March 31, 1998 shall be pro-rated, if necessary. [for a period of one year from the date of issuance, unless suspended or revoked by the director in accordance with the provisions of Parks and Wildlife Code, §§12.501-12.507].

(d) A scientific breeder's permit may be renewed annually, provided that the applicant:

(1)-(3) (No change.)

(4) has paid the permit renewal fee as specified in §53.8 [§65.604] of this title (relating to (Miscellaneous Wildlife Licenses and Permits [Fees]).

(e) The department may, at its discretion, refuse to issue a permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43.

§65.605. Holding Facility Standards and Care of Deer.

(a) [A scientific breeder shall provide and maintain the following facility standards during the permit period.]

[(1) At any time that an enclosure is used to hold deer in captivity, the enclosure shall meet the following space requirements:]

[(A) a minimum of 400 square feet per adult deer;]

[(B) a minimum of 400 square feet for each adult doe with fawn(s); and]

[(C) a minimum of 200 square feet for each fawn segregated from its dam.]

[(2) Each enclosure, when deer are present, shall be provided with:]

[(A) a prepared commercial deer ration of not less than 12% protein at a daily rate of not less than two2 pounds per deer when comparable natural forage is not immediately available within that enclosure in quantity to maintain deer in a healthy condition; and]

[(B) sufficient fresh, clean water at all times.]

[(3) Each enclosure where deer are held shall include a single area of continuous shade measuring at least 20 square feet per deer.]

[(4)] The entire perimeter fence of a facility shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain deer. An indoor facility is acceptable if it meets the standards described in

this section and provides permanent access to an outdoor environment that is sufficient for keeping the deer in captivity.

(b) A permittee shall notify the department immediately upon discovering the escape of deer from a facility. Such notice shall be made on a form provided by the department and shall be notarized. The permittee shall have ten days from the date of such report to capture only those deer that are marked in accordance with §65.607 of this title (relating to Marking of Deer). All recaptured deer must be returned to the facility from which the deer escaped. If after ten days the permittee is unable to capture escaped deer that have been reported in accordance with this subsection, the department may grant an additional five-day period for capture efforts to continue, contingent upon the permittee proving to the department's satisfaction that reasonable efforts were made to effect the capture during the first 10-day period. [~~The permittee shall insure that medical treatment will be provided, when appropriate, to maintain the health of deer held under the provisions of this subchapter.~~]

(c) A scientific breeder may move fawns from a permitted facility to another location for nursing purposes, provided:

(1) the nursery is located on the same tract of land as the permitted breeding facility;

(2) the scientific breeder requests and receives written authorization from the department to establish a designated location for nursing purposes; and

(3) all fawns in such a nursery are marked in accordance with §65.607(a) of this title (relating to Marking of Deer).

§65.607. Marking of Deer.

(a) Each deer held in captivity by a permittee shall be permanently marked by:

(1) a unique number tattooed in one ear; and

(2) an ear tag that shows the letters "TX" followed by the serial number assigned to the scientific breeder [~~for positive identification as prescribed in this section~~].

[~~(1) Each deer shall have a metal tag attached to the ear as prescribed by Texas Parks and Wildlife Code, §43.356(b); and~~]

[~~(2) Each deer shall be permanently freeze-branded on the left hip with a 2" by 4" brand showing the letters "TX" together, or shall be tattooed in one ear with the serial number assigned to the scientific breeder.~~]

(b) [~~(3)~~] Fawns must be permanently marked by the first November [~~October~~] 1 following birth.

(c) All deer held in a scientific breeder facility prior to the effective date of this section must be marked upon first handling or prior to leaving the facility, whichever occurs first.

§65.608. Annual Reports and Records.

(a) Each scientific breeder shall file a completed [~~an~~] annual report on a form supplied or approved by the department by not later than April 16 of each year. [~~15 days following permit expiration on a form provided by the department. The report shall cover the 12-month period of validity for the permit and account for the disposition of all deer by providing the following information:~~

[~~(1) the number of deer possessed at beginning of report period;~~]

[~~(2) the number of deer sold or transferred and the name and address of each purchaser and/or recipient of each deer;~~]

[~~(3) the number of deer purchased and the name and address of person(s) from whom the deer were purchased;~~]

[~~(4) the number of fawns born during the reporting period;~~]

[~~(5) the number of deer that died and the cause of each mortality;~~]

[~~(6) the number of deer released into the wild and location of each release; and~~]

[~~(7) the number of deer possessed at the end of the reporting period.~~]

(b) [~~The annual report shall also indicate the results of any scientific research conducted authorized under the permit during the permit year.~~]

[~~(c)~~] The holder of a scientific breeder's permit shall maintain and, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity.

§65.609. Purchase of Deer and Purchase Permit.

(a)-(b) (No change.)

(c) An individual may possess or obtain deer only after a purchase permit has been issued by the department. Purchase permits shall be valid [~~effective~~] for 30 [~~90~~] days from the date that the scientific breeder has:

(1) completed, dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin; and

(2) received and possesses on their person a return fax from the department in acknowledgment of the fax required by paragraph (1) of this subsection [~~of issuance and shall expire upon use~~].

(d) A purchase permit is valid only during the period of validity of a scientific breeder's permit, is effective for only one transaction, and expires after one instance of use.

(e)[~~(d)~~] A one-time, 30-day [~~90-day~~] extension of effectiveness for a purchase permit may be obtained by notifying the department prior to the original expiration date of the purchase permit.

(f) If a scientific breeder transports deer to another scientific breeder during any open season for deer or during the period beginning ten days immediately prior to an open season for deer, the scientific breeder shall, as part of the notification requirement of subsection (c) of this section, include on the purchase permit faxed to the department the unique number of each deer being transported.

(g) [~~(e)~~] The department may issue a purchase permit for liberation for stocking

[~~(1)~~] the release of deer will not detrimentally affect existing populations or systems[~~; and~~]

[~~(2) the release is in accordance with the provisions of the department's stocking policy, §§52.101, 52.105, 52.201, 52.202, 52.301 and 52.401 of this title (relating to Stocking Policy)~~].

(h) [~~(f)~~] Deer lawfully purchased or obtained for stocking purposes may be temporarily held in captivity:

(1) to acclimate the deer to habitat conditions at the release site;

(2) when specifically authorized by the department;

(3) for a period to be specified on the purchase permit, not to exceed six months;

(4) [if the deer are maintained as set forth in §65.605(a)(1)-(4) of this title (relating to Holding Facility Standards and Care of Deer);]

[(5)] if the deer are not hunted prior to liberation; and

(5) [(6)] if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility.

§65.610. Transport of Deer and Transport Permit.

(a)-(b) (No change.)

(c) All deer entering the boundaries of this state shall:

(1) be accompanied by a certificate of health, signed by an accredited veterinarian, which bears the purchaser's name and address, specifies the destination of the deer, and certifies that the deer:

(A) (No change.)

(B) are free of external parasites; [and]

(C) (No change.)

(D) have been tested in accordance with any applicable regulations of the Texas Animal Health Commission; and

(2) (No change.)

(d) Deer may not be transported for the purposes of this subchapter during any open season for deer or during the period beginning ten days immediately prior to an open season for deer unless the scientific breeder notifies the department by contacting the Law Enforcement Communications Center in Austin no less than 24 hours before actual transport occurs.[:

[(1) the antlers of any male deer have been removed immediately above the pedicel];

[(2) the game warden in the county of origin of the deer, if the county of origin is within the state of Texas, and the game warden in the county of the destination of the deer, if the county is within the state of Texas, have been notified in writing; and

[(3) written permission has been granted by the game wardens in both the origin and destination counties, if such counties are within the state of Texas, and such written permission is carried with the deer during transportation.]

(e) Transport permits shall be effective for 30 [90] days from the date that the scientific breeder has:

(1) completed, dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin; and

(2) received and possesses on their person a return fax from the department in acknowledgment of the fax required by paragraph (1) of this subsection [of issuance and shall expire upon use].

(f) A transport permit is valid only during the period of validity of a scientific breeder's permit, is effective for only one transaction, and expires after one instance of use.

(g)[(f)] A one-time, 30-day [90-day] extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

§65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, [or] E, or R shall not be commingled with deer held in a permitted scientific breeder facility [under a scientific breeder's permit].

(b) A person commits an offense if that person places or holds deer in captivity at any place or on any property other than property for which a scientific breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold deer at a veterinary facility for treatment.

(c) No live deer taken from the wild may be possessed under a scientific breeder's permit or held in a scientific breeder's facility .

(d)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716429
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

Subchapter T. Scientific Breeder's Permit

31 TAC §65.604, §65.606

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Department proposes the repeal of §65.604 and §65.606, and amendments to §§65.601-65.603, 65.605, and 65.607-65.611, concerning scientific breeders. The amendments are necessary to implement statutory provisions enacted by the 75th Texas Legislature in House Bill 2541. The amendments will function to synchronize the period of validity of scientific breeder permits by setting a universal expiration date; standardize the tagging requirements for captive deer; allow for the recapture of escaped deer; provide procedures and requirements for the transportation of deer immediately before and during an open deer season; stipulate that all deer entering the state for the purposes of Subchapter L be tested as required by the Texas Animal Health Commission; and effect housekeeping changes in the interest of clarity.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments as proposed will be the conformance of the department's regulations to statutory law.

There will be no effect on small businesses. There is no additional economic cost to persons required to comply with the amendments as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the amendments as proposed will not impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4774 or 1-800-792-4410.

The repeals and amendments are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

The repeals and amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.604. Fees.

§65.606. Inspections.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716428
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Objective, Mission, and Program

37 TAC §1.4

The Texas Department of Public Safety proposes an amendment to §1.4, concerning Programs Under Traffic Law Enforcement Division. Subsections (a)-(e) are amended by adding and deleting language in order to better identify the activities of the various services under the Traffic Law Enforcement Division. Subsection (h) is amended to more accurately describe the operating sections within the Motor Carrier Bureau.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule. There will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to make the public aware of program and activity changes under the Traffic Law Enforcement Division. There is no anticipated cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed under Texas Government Code, §411.004(3), and §411.006(4) which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the Commission, shall have the authority to adopt rules necessary for the control of the department.

Texas Government Code, §411.004(3) and §411.006(4) are affected by this proposal.

§1.4. Programs Under Traffic Law Enforcement Division.

(a) Highway Patrol Service. The program of the Highway Patrol Service is "Police Traffic Supervision and General Police Work on Rural Highways." This program consists of the following major activities:

(1) Police traffic supervision on rural highways:

(A) police traffic direction;

(B) police traffic accident investigation, and;

(C) police traffic law enforcement and patrol.

(2) General police work - primarily on rural highways:

(A) criminal law enforcement;[(~~limited~~)]

(B) emergencies and disasters, and;

(C) security activities.

(b) License and Weight Service. The program of the License and Weight Service is "The Supervision of Commercial Vehicles and For Hire Traffic and [~~Limited~~] Traffic and General Law Enforcement on Rural Highways." This program includes the following major activities:

(1) Supervision of commercial vehicle traffic–basic:

(A) assistance to commercial vehicle owners and operators on technical matters;

(B) supervision of motor carrier operations, and;

(C) traffic law enforcement on commercial and "for hire" vehicles .

(2) [~~Limited~~] Traffic and criminal [~~general~~] law enforcement on rural highways. [~~–secondary~~]

(c) Drivers License Service. The program of the Drivers License Service is the licensing and postlicense control of drivers and [~~limited~~] traffic and general law enforcement. This program consists of the following major activities:

(1) examination of new drivers;

(2) improvement and control of problem drivers, and ;

(3) [~~limited~~] traffic and criminal[~~general~~] law enforcement[- ~~secondary~~].

(d) Vehicle Inspection Service. The program of the Vehicle Inspection Service is "Vehicle Inspection Station Supervision and [~~Limited~~]Traffic and General Law Enforcement [~~on Rural Highways~~]." This program includes the following major activities:

(1) Inspection station supervision–basic:

(A) station qualification;

(B) station inspection, and;

(C) station control.

(2) [~~Limited~~] Traffic and criminal [~~general~~] law enforcement by vehicle inspection commissioned officers.[~~on rural highways-secondary~~]

(e) Safety Education Service. The program of the Safety Education Service is "Public Safety Education." This program consists of the following major activities:

(1) Public traffic safety education;

(2) Public education in crime prevention and civil defense matters;

(3) Public information;

(4) Cooperation with and assistance to other agencies , and;

(5) Traffic and criminal law enforcement.

(f) Communications Service. The program of the Communications Service is "Police Communication." This program consists of the following activities:

(1) Transmission and receipt of department messages;

(2) Transmission and receipt of emergency-type messages for other police agencies, and;

(3) Other special assistance to departmental agencies.

(g) General Obligations. Personnel of all services, agencies, and units in the department are subject to assignment by the director to perform in any program or activity when he deems such assignments necessary.

(h) Motor Carrier Bureau. The program of the Motor Carrier Bureau is to provide administrative support applicable to the License and Weight Service relative to motor carrier safety issues[~~safety and lease~~]. This program consists of the following sections.

(1) The Motor Carrier Safety Section will provide the support to administer the Motor Carrier Safety Requirements.

(2) The Motor CarrierRecords [~~Lease~~] Section maintains all activity reports submitted by the [~~will administer the lease law and provide record administrative support to~~] License and Weight Service.

(3) The Motor Carrier Compliance Audit Section performs the administrative function of the enforcement of the Motor Carrier Safety and Hazardous Materials Regulations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 19, 1997.

TRD-9716131
Duldey M. Thomas
Director
Texas Department of Public Safety

Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 424–2890

♦ ♦ ♦

Chapter 3. Traffic Law Enforcement

Traffic Supervision

37 TAC §3.59, §3.62

The Texas Department of Public Safety proposes amendments to §3.59, Regulations Governing Transportation of Hazardous Materials and §3.62, Regulations Governing Transportation Safety. The amendments are necessary to implement the changes enacted by the 75th Texas Legislature, 1997, in House Bills 1418 and 3252 and Senate Bills 370, 1486, and 1828. The amendments are also necessary to implement changes to Part 395 of the Federal Motor Carrier Safety Regulations concerning the hours of service requirements for drivers transporting agricultural commodities or farm supplies to correct a provision of the vision waiver process, to clarify the training requirements for peace officers authorized to enforce the motor carrier safety standards provided in Texas Civil Statutes, Article 6675d, to implement changes to the Safety Audit Program to maintain compatibility with the Federal SAFESTAT Program, and to establish procedures to accept installment payments for administrative penalties assessed for violations discovered during compliance review audits.

House Bill 1418 extends the hours of service requirements contained in Part 395 of Title 49, Code of Federal Regulations to motor carriers transporting household goods for compensation in intrastate commerce in a vehicle not defined as a commercial motor vehicle.

House Bill 3252 extends the hours of service requirements contained in Part 395 of Title 49, Code of Federal Regulations to contract carriers transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

Senate Bill 370 establishes a new section within the Texas Transportation Code, Article 6675c-2, for Foreign Commercial Motor Transportation. The new section provides a definition of a foreign commercial motor vehicle and a border commercial zone. Senate Bill 370 also makes the Federal Motor Carrier Safety Regulations applicable to all foreign commercial motor vehicles.

Senate Bill 1486 provides a definition of an agricultural commodity, establishes the planting and harvesting seasons for Texas, expands the 100 air-mile radius provision in Part 395 for interstate operations to a 150 air-mile radius for intrastate operations, and prohibits the imposition of the hours of service requirements on vehicles transporting agricultural commodities within a 150 air-mile radius of the point of production. These changes were necessary to implement the provisions of the National Highway Systems Designation Act of 1995, Public Law 104-59, 109 Stat. 568 (1995) (NNHS Act) as signed by the President of the United States on November 28, 1995. Section 345 of the Act created an exemption from the maximum driving and on-duty time regulations contained in Part 395 for drivers transporting agricultural commodities or farm supplies, provided that the transportation takes place within a 100 air-mile radius of the source of the commodities or the distribution point for the farm supplies. The Act also required the State to determine the planting and harvesting seasons for agricultural commodities.

Senate Bill 1486 also changed the definition of a commercial motor vehicle to better define a farm vehicle, expanded the definition of the "Federal Motor Carrier Safety Regulations" to allow more flexibility to the department to adjust to proposed changes to the Motor Carrier Safety Regulations by the Federal Highway Administration, and changed the reference of "peace" to "police" for those officers eligible to be trained and certified to enforce the motor carrier safety and hazardous materials regulations.

Senate Bill 1828 also changed the reference of "peace" to "police" officer and expanded the authority of officers of the department and certified police officers to enforce the federal safety regulations and weight statutes on vehicles entering the state at the U. S. Customs' ports of entry. It also allows those officers to prohibit the further operation of those vehicles that are in violation of the federal safety regulations or these rules.

In addition to the changes resulting from legislation enacted during the 75th Texas Legislature, 1997, the department proposes to make the following corrections and clarifications to the rules:

The procedures for appealing a denial for a vision waiver stated that the director could refer the application to the Medical Advisory Board. This referral procedure was established in error because Texas Civil Statutes, Article 6687b-2, as amended by Senate Bill 472, does not authorize the Medical Advisory Board to review the vision waiver applications submitted under the guidelines of Part 391 of the Federal Motor Carrier Safety Regulations.

The department seeks to clarify the authority of police officers from municipalities to enforce the provisions of the Federal Motor Carrier Safety And Hazardous Materials Regulations by adding the requirement that these police officers must meet and maintain the minimum training and recertification requirements set out in the rules.

The Federal Highway Administration implemented the SAFESTAT Program in April, 1997 which changed the methodology used to select motor carriers for compliance review audits. The department has to amend its selection process in order to maintain compatibility with the Federal program.

The department has been conducting administrative hearings on enforcement actions arising from violations discovered during compliance review audits since September, 1996. Several motor carriers that have had enforcement cases which have resulted in administrative penalties have requested to pay the penalties in installments. The department believes that an installment payment program would benefit the motor carrier industry by reducing their financial burden while allowing them time to comply with the safety regulations and pay the administrative penalties.

Lester Mills, Major, Traffic Law Enforcement Division, has determined that for each year of the first five-year period the sections are in effect there should be no fiscal implications for state or local government as a result of enforcing or administering the sections. The expansion of the 100 air-mile radius provision for agricultural commodities may be deemed incompatible with the federal requirements by the U. S. Department of Transportation and could result in a 50% reduction in the federal funds available to the department to enforce the Federal Motor Carrier Safety Regulations. However, the department believes that the expansion of the air-mile radius is in the best interest of the agricultural industry and the enforcement officers. The department is unable to project the fiscal impact at this time.

Major Mills also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure to the public that a motor carrier is in compliance with the all of the statutes and regulations pertaining to the safe operation of commercial vehicles in the state. There will be a minimal effect on small or large businesses. The cost of compliance for small businesses is the same as the cost of compliance for large businesses for each employee.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 6675d and Article 6687b-2, Texas Transportation Code, Chapters 522 and 549, and Texas Government Code, §411.006(4), which provides the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorizes the director to adopt rules regulating the safe operation of commercial motor vehicles.

This proposal affects Texas Civil Statutes, Article 6675d and 6675c-2, Texas Transportation Code, Chapters 522 and 644, and Texas Government Code, §411.006(4).

§3.59. Regulations Governing Transportation of Hazardous Materials.

(a) Federal regulations adopted. On September 28, 1973, the director of the Texas Department of Public Safety adopted the Federal Hazardous Materials Regulations, Parts 171-173, 177, and 178, by reference including all amendments and interpretations thereto for commercial vehicles [~~when~~] operated in intrastate commerce. The director subsequently adopted [~~department further adopts~~] Part 180 on February 3, 1992 by reference including all amendments and interpretations thereto. The department further adopts Subpart G of Part 107 by reference, including all amendments and interpretations thereto.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6) [~~Civil Statutes, Article 6675c, §1(2)~~];

(B) (No change.)

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) (No change.)

(E) regional highway administrator means the director of the Texas Department of Public Safety or the designee of the director;

(F) (No change.)

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who [~~or which~~] transports by commercial motor vehicle property of which the person is the owner, lessee, or bail,

when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of any commercial enterprise.

(2) (No change.)

(3) All references in Title 49, Code of Federal Regulations, Chapter 1, Subpart G of Part 107, Parts 171-173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(4)-(5) (No change.)

(6) Regulations adopted by this department, other than placarding, shipping papers, and fire extinguisher requirements [~~,~~] and the Federal Motor Carrier Safety Regulations [~~requirements~~] do not apply to cargo tanks having a capacity of 3,000 gallons or less and used to transport flammable liquids, provided the tank was manufactured or assembled prior to January 1, 1982. All cargo tanks having a 3,000 gallon capacity or less and used to transport flammable liquids manufactured or assembled on or after January 1, 1982, will be required to meet all specifications and regulations for such tanks as required in Title 49, Code of Federal Regulations, [~~Chapter 1,~~] Parts 171-173, 177, 178, and 180.

(7)-(8) (No change.)

(9) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code §644 [~~Civil Statutes, Article 6675d~~], and §3.62 of this title (relating to Regulations Governing Transportation Safety).

§3.62. Regulations Governing Transportation Safety.

(a) (No change.)

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code §643.001 (6) [~~Civil Statutes, Article 6675c, §1~~];

(2)-(6) (No change.)

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; [~~and,~~]

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code §548.001(1) [~~, as amended by Texas Civil Statutes, Article 6701d, §140A(a)~~];

(9) foreign commercial motor vehicle has the meaning assigned by Texas Civil Statutes, Article 6675c-2;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including woodchips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and,

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) (No change.)

(B) a farm vehicle with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 48,000 pounds [~~or more~~] when operating intrastate;

(C)-(D) (No change.)

(2) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code §548.001(1) is subject to the record-keeping requirements in 49 Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(3) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(4) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(5) [~~(2)~~] All regulations contained in Title 49, Code of Federal Regulations, Parts 382, 385, 386, 390-393 and 395-397, and all amendments thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(6) [~~(3)~~] Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

(d) Exemptions. Exemptions to the adoption in subsection (a) of this section were made pursuant to Texas Transportation Code §644.052, Texas Civil Statutes, Article 6675d, §5 (as authorized by Senate Bill 370 and House Bill 1418), and §5 (as authorized by Senate Bill 1486), and §3A [~~Civil Statutes, Article 6675d, §4 and §5~~] and are adopted as follows:

(1)-(4) (No change.)

(5) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons. Drivers claiming this exemption must comply with the provisions of Title 49, Code of Federal Regulations §395.8, Driver's Record of Duty Status.

(6) Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code §548.001(1) is subject to the recordkeeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(7) Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except 391.11 (b)(6) and subparts E and H, Parts 393, 395, and 396, except §396.17.

(e) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas

Transcription, §644.053 [~~Civil Statutes, Article 6675d, §5~~], are as follows:

(1)-(7) (No change.)

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard Number 121 (49 Code of Federal Regulations 571.121) applicable to the vehicle at the time it was manufactured.

(9) (No change.)

(10) Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) (No change.)

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code §644 [~~Civil Statutes, Article 6675d~~]; and

(ii) (No change.)

(f) Vision Waiver. Under this section the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under Title 49, Code of Federal Regulations, Part 391.41(b)(10) provided that intrastate drivers meet the vision standards specified in §16.9 of this title (relating to Qualifications to Drive in Intrastate Commerce).

(1)-(4) (No change.)

(5) Applicants denied a waiver may appeal the decision of the department by contacting the director, in writing, within 20 days after receiving notification of the denial. The request for an appeal must contain the name, address and driver's license number of the applicant, the reasons why the waiver should be granted, and include all pertinent documents which support the reasons why the waiver should be granted. The denial is stayed pending the review of the director. The decision of the director is final. [~~The director may stay the denial pending the findings of the Medical Advisory Board. The decision of the Medical Advisory Board is final.~~]

(g) Authority to Enforce.

(1) An officer of the department may enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d.

(2) Police [~~Peace~~] officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (h) of this section and certified by the department may enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d:

(A)-(C) (No change.)

(h) Training and Certification Requirements.

(1) Minimum standards. Police [~~Peace~~] officers from the municipalities specified in subsection (g) of this title and certified to enforce this article must meet [~~as a minimum~~] the following standards:

(A)-(C) (No change.)

(2) Hazardous materials. Police [~~Peace~~] officers desiring to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course; [~~and~~]

(B) (No change.)

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 [~~30~~] level one inspections; and,

(D) (No change.)

(3) Cargo Tank Specification. Police [~~Peace~~] officers desiring to enforce the Cargo Tank Specification requirements must:

(A) (No change.)

(B) successfully complete a Basic Hazardous Materials Course; [~~and~~]

(C) (No change.)

(D) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 [~~30~~] level one inspections; and

(E) (No change.)

(4) Motor Coach. Police officers desiring to enforce motor coach requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Motor Coach Inspection Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 24 level one inspections; and

(D) successfully complete an annual recertification examination.

(5) [~~(4)~~] Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(6) [~~(5)~~] Training provided by other training entities. A public or private entity desiring to train police [~~peace~~] officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all police [peace] officers attending the training course, including the police [peace] officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each police [peace] officer or municipality the cost of providing the training course(s).

(i) Safety Audit Program. The rules in this subsection, as authorized by Texas Transportation Code §644.155 [Civil Statutes, Article 6675d, §15], establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) (No change.)

(2) Inspection of Premises.

(A) Authority to Inspect. An officer or employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code §644.155[Civil Statutes Article 6675d].

(B) (No change.)

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code §644.104[Civil Statutes, Article 6675d, §9], is liable to the state for a civil penalty not to exceed $1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code §644.151 [Civil Statutes, §10, Article 6675d].

(iii) (No change.)

(3) Compliance Review Audits. A Compliance Review will be conducted based upon the following criteria:

(A) unsatisfactory safety assessment factor evaluations [involvement in a fatality accident];

(B)-(C) (No change.)

[(D) follow-up investigations of motor carriers assessed administrative penalties resulting from enforcement actions;]

[(E) history of non-compliance with out-of-service orders;]

[(F) violations of the Federal Safety Regulations;]

(D) [(G)] requests from the Legislature and state or federal agencies, and;

[(H) requests from the Texas Department of Transportation concerning violations of Texas Civil Statutes, Article 6675c;]

[(I) requests for changes in safety rating assessed by the department; and]

(E) [(J)] request for a safety rating determination.

(4) (No change.)

(j) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of Texas Civil Statutes, Article 6675d or a provision of the Texas Transportation Code Title 7, Subtitle C,Chapters 541 - 600 (relating to the Rules of the Road [Uniform Traffic Laws]), including any amendments [to Texas Civil Statutes, Article 6701d] not codified in the Texas Transportation Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code §644.153 (b) [Civil Statutes, Article 6675d, §12(b)].

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation. A penalty under this section may not exceed the maximum penalty provided for violations of a similar federal safety regulation as provided under 49 United States Code, §521(b), §5123, and Title 49, Code of Federal Regulations, Parts 386.81, 386.82, and Appendix A to Part 386.

(A)-(D) (No change.)

(E) Hazardous materials violations. A person that knowingly violates a hazardous material regulation is liable for an administrative penalty of at least $250 but not more than $27,500 [$25,000] for each violation. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstance and exercising reasonable care would have that knowledge. A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(3) (No change.)

(k) (No change.)

(l) Informal hearing.

(1) Request. If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's [manager's] designee.

(2) (No change.)

(3) Resolution. In the event matters are resolved in the motor carrier's favor, the manager or the director's designee will send the carrier written notification that the proposed penalty is withdrawn.

(4) Modified penalty. If matters are resolved resulting in a modified penalty, the manager or the director's designee may prepare a settlement agreement as provided by subsection (n) of this section .

(5) (No change.)

(m) (No change.)

(n) Collection and Settlement.

(1) (No change.)

(2) At any time prior to the date on which a final order is issued by the director, the department and the motor carrier may agree to enter into a compromise settlement agreement. The compromise settlement agreemeshall be signed by the motor carrier and the director, or the director's designee and will reflect that the motor carrier consents to the assessment of a specific administrative penalty or other action by the department against the motor carrier.

(3) (No change.)

(o) Installment Payment of Administrative Penalty.

(1) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay. An application shall be submitted on a form approved by the department.

(2) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(3) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

(p) [~~(o)~~] Suspension and revocation by the Texas Department of Transportation.

(1) The director will determine whether the department will request the Texas Department of Transportation to suspend or revoke a registration issued by the Texas Department of Transportation based upon the department's compliance review.

(2) This determination may be based upon the following:

(A) an unsatisfactory safety rating under Title 49, Code of Federal Regulations, Part 385;

(B) multiple violations of Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d;

(C) multiple violations of one of these rules; and/or,

(D) multiple violations of the Uniform Traffic Act or Transportation Code.

(3) Once the determination has been made the director will forward a letter to the executive director of the Texas Department of Transportation requesting said department initiate a suspension/ revocation proceeding against the motor carrier.

(4) Any suspension/revocation action initiated by the Texas Department of Transportation, pursuant to this section, shall be administered in the manner specified by the rules of the Texas Department of Transportation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 19, 1997.

TRD-9716132
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 424-2890

♦ ♦ ♦

Part III. Texas Youth Commission

Chapter 95. Youth Discipline

Subchapter A. Disciplinary Practice

37 TAC §95.9

The Texas Youth Commission (TYC) proposes an amendment to §95.9, concerning parole revocation consequence. The amendment will ensure that other interventions are pursued before parole revocation is sought.

Terry Graham, Assistant Deputy Executive Director for Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection for the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0811, which provides the Texas Youth Commission with the authority to develop a management system for parole services that objectively measures and provides for the classification of children based on the level of children's needs and the degree of risk they present to the public.

The proposed rule implements the Human Resource Code, §61.034.

§95.9. Parole Revocation Consequence.

(a) Purpose. The purpose of this rule is to provide for the revocation of parole status as a disciplinary consequence for behavior that presents an unacceptable risk to the safety of persons and property. Parole revocation is considered a major consequence.

(b) Applicability.

(1) The due process necessary to effect this rule is found in (GAP) §95.51 of this title (relating to Level I Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.29 of this title (relating to Program Completion and Movement). Also see (GAP) [~~§85.35~~] §85.37 of this title (relating to Sentenced Offender Disposition).

(c) Explanation of Terms Used. A high risk offense -is any major rule violation which may result in a classification other than general offender or violator of CINS probation.

(d) Criteria and Disposition.

(1) Parole will be revoked if it is found at a level I hearing that a youth has:

(A) committed a high risk offense;

(B) committed a felony; or

(C) committed any major rule violation and has previously been classified for a high-risk offense.

(2) Parole of a general offender is revoked if it is found at a level I hearing that the general offender[:] has committed a major rule violation; and

[~~(A)~~ has committed a major rule violation; and]

(A) other interventions short of parole revocation have been tried, but failed; and/or

(B) is a threat to the safety of persons or property.

(3) If extenuating circumstances are found incident to a high risk offense, parole is revoked, but the high risk classification may be waived pursuant to (GAP) §85.23 of this title (relating to Classification).

(4) If extenuating circumstances are found incident to any violation other than a high risk offense, parole is not revoked. See extenuating circumstances discussed in (GAP) §85.23 of this title (relating to Classification).

(5) If criteria for revocation are not established at a level I hearing, the youth's parole is not revoked, but lesser disciplinary consequences may be imposed for any rule violation(s) proved at the hearing.

(e) Restrictions.

(1) A level I hearing is required in order to revoke a youth's parole status.

(2) Unless otherwise requested in writing by local authorities, a level I hearing may be held even if TYC staff receive information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities.

(3) If a youth is on parole from another state and is being supervised by Texas Youth Commission (TYC) under agreement with the other state, a parole revocation hearing is held by TYC and the youth returned to the sending state, coordinated by the interstate compact administrator and general counsel.

(4) If a TYC parolee commits an offense in another state, the return of such youth is coordinated by the interstate compact administrator and the general counsel. A parole revocation hearing is coordinated by and held at the request of the assigned parole officer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716399
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 424–6244

♦ ♦ ♦

Part V. Texas Board of Pardons and Paroles

Chapter 143. Executive Clemency

Full Pardon and Restoration of Rights of Citizenship

37 TAC §143.2

The Texas Board of Pardons and Paroles proposes an amendment to §143.2, concerning pardons for innocence. The Board proposes an amendment to §143.2 for the purpose of clarifying the requirements for consideration of a full pardon based upon innocence. Specifically, in order for the Board to consider the application, if the recommendation from current trial officials is based on evidence not previously available, the application must contain a certified order or judgment from a court having jurisdiction accompanied by a certified copy of the findings of fact.

Victor Rodriguez, Chair of the Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be a clarification of Board procedures in pardons based upon innocence. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amendment is proposed under the Texas Constitution, Article IV, §11, and the Texas Code of Criminal Procedure, Article §48.01, which provides the Board with authority to recommend reprieves, commutations of punishments and pardons to the governor.

There is no cross-reference to the proposed amended rule.

§143.2. Pardons for Innocence.

On the grounds of innocence of the offense for which convicted the board will only consider applications for recommendation to the governor for full pardon upon receipt of.

(1) a written unanimous recommendation of the current trial officials of the court of conviction; and [~~/or~~]

(2) affidavits of witnesses upon which the recommendation of innocence is based; and

(3) if the basis for the recommendation is evidence not previously available, a certified order or judgment of a court having jurisdiction accompanied by a certified copy of the findings of fact . [~~(,if any); and~~

[~~(3)~~ affidavits of witnesses upon which the finding of innocence is based.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716403
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–1883

♦ ♦ ♦

37 TAC §143.57

The Texas Board of Pardons and Paroles proposes an amendment to §143.57, concerning commutation of death sentence to lesser penalty. The Board proposes an amendment to §143.57 for the purpose of imposing the same deadline for application for commutations of death sentence as that in Subsection (a) of Rule 143.43 which sets out Board procedure in capital reprieve cases.

Victor Rodriguez, Chair of the Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be a clarification of the Board procedures in accepting requests for commutation. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amended rule is proposed under the Texas Constitution, Article IV, §11, and the Texas Code of Criminal Procedure, Article 48.01, which provides the Board with authority to recommend reprieves, commutations of punishments and pardons to the governor.

There is no cross-reference to the proposed amended rule.

§143.57. Commutation of Death Sentence to Lesser Penalty.

(a) The board will consider recommending to the governor a commutation of death sentence to a sentence of life imprisonment or the appropriate maximum penalty that can be imposed upon receipt of:

(1) a request from the majority of the trial officials of the court of conviction; or

(2) a written request of the convicted person or his/her representative setting forth all grounds upon which the application is based, stating the full name of the condemned felon, the county of conviction, and the execution date.

(b) The written application requesting commutation of death sentence to lesser penalty must be filed at the board's central office headquarters during normal business office hours of a working day which is at least five working days in advance of the scheduled day of execution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716404
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–1883

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §§15.100, 15.415, 15.435, and 15.455, concerning definitions, ownership and accessibility, liquid resources, and unearned income; proposes to repeal §§15.430-15.434, concerning client participation in transfer of resources, transfer of resources–July 1, 1988, and after, exceptions to transfer resources–July 1, 1988 and after, transfer of resources penalty period, spouse-to-spouse transfers under spousal impoverishment provisions; and proposes new §§15.417 and 15.430, concerning trust–August 11, 1993, and after, and transfer of assets in its Medicaid eligibility chapter. The purpose of the repeals is to delete the transfer of resources information. The purpose of the new sections and amendments is to add long term care Medicaid eligibility rules covering transfers of assets and trusts, as required by Public Law 103-66.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposals will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that agency rules will be in compliance with federal law. There will be no effect on small businesses as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of this proposal may be directed to John Stockton at (512) 438-3225 in DHS's Long Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-296, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register* .

Subchapter A. General Information

40 TAC §15.100

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.100. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Inheritance - Cash, other liquid resources, noncash items, or any right in real or personal property received at the death of another. An individual may not have access to his inheritance pending legal action. An inheritance is income in the month of receipt unless the inherited item would be an excluded resource. Effective August 11, 1993, waiving an inheritance may result in a transfer of assets penalty.

Medicaid-qualifying trusts (MQT) - A Medicaid-qualifying trust is one that the client, his spouse, guardian, or anyone holding his power of attorney establishes using the client's money. The client is the beneficiary of a Medicaid-qualifying trust. A Medicaid- qualifying trust is one that was established between June 1, 1986, and August 10, 1993. Trusts which meet the MQT definition and were established prior to June 1, 1986, are treated as standard inter vivos trusts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716212
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter D. Resources

40 TAC §§15.415, 15.417, 15.430, 15.435

The amendment and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.415. Ownership and Accessibility.

(a) - (c) (No change.)

(d) Resources in a testamentary or inter vivos trust are countable if the client is the trustee and has the legal right to revoke the trust and use the money for his own benefit. If he does not have access to the trust, [~~and the trust is not a Medicaid qualifying one,~~] then the trust is not counted as a resource. If a trust is not counted as a resource, payments from the trust made to or on behalf of the client are considered income (except payments used to purchase medical or social services for the client). If the client's access to a trust is restricted; that is, only the trustee (other than the client) or the court may withdraw the principal, then the value of the trust as a resource is not counted. This is true even if

(1) - (3) (No change.)

(e) - (g) (No change.)

(h) The following applies when considering Medicaid-qualifying trusts:

(1) (No change.)

(2) A Medicaid-qualifying trust established for a minor child using the lump sum payment received in settlement of *Zebley vs. Sullivan* is excluded from all consideration of eligibility under undue hardship provisions. Undue hardship exists because the client would otherwise be forced to spend the settlement funds on services now covered by Medicaid when the funds will be needed once the client reaches majority. A trust established using Zebley settlement funds is excluded under undue hardship policy, even when the trust is set up on or after August 11, 1993. [~~Undue hardship provisions apply only to Zebley settlement clients.~~]

(i) (No change.)

(j) A testamentary trust is established by will.

(k) An inter vivos trust is established while the person creating the trust is still living.

§15.417. Trusts–August 11, 1993, and After.

(a) Introduction.

(1) The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) revised policy concerning trusts established on or after August 11, 1993, using the client's assets. The trust provisions apply to all Medical Assistance Only (MAO) clients, whether institutionalized or community-based. However, the penalty period for transfers of assets into irrevocable trusts applies only to institutional care and home/community-based waiver services.

(2) A trust includes any legal instrument, device, or arrangement which may not be called a trust under state law, but which is similar to a trust. That is, it involves a grantor who transfers property to an individual or entity with fiduciary obligations with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, irrevocable burial trusts, and other similar entities managed by an individual or entity with the fiduciary obligations.

(3) The characteristics of the trust include the following:

(A) the trust was established on or after August 11, 1993;

(B) the client's assets were used to form all or part of the corpus of the trust. The policy in this section does not apply to trusts established by a will in which the client is the beneficiary;

(C) the trust was established by:

(i) the client;

(ii) the client's spouse;

(iii) any person, including a court or administrative body, with legal authority to act on behalf of or in place of the client or client's spouse; or

(iv) any person, including a court or administrative body, acting upon the direction or the request of the client or the client's spouse.

(4) If the client's assets comprise only part of the corpus, the trust policies apply to that portion of corpus consisting of the client's former assets.

(b) Treatment of trusts.

(1) The following policy applies to trusts without regard to:

(A) the purpose for which the trust is established;

(B) whether the trustee, or similar person or entity, has or exercises any discretion under the trust;

(C) any restrictions on when or whether distributions can be made from the trust; or

(D) any restrictions on the use of distributions from the trust.

(2) This means that any trust which meets the basic requirements outlined in previous sections can be counted in determining eligibility for Medicaid. No clause or requirement in the trust, no matter how specifically it applies to Medicaid, or other federal or state programs (that is, an exculpatory clause), precludes a trust from being considered under the rules of this section. While exculpatory clauses, use clauses, trustee discretion, or restrictions on distributions do not affect a trust's countability, they do have an impact on how the various components of specific trusts are treated.

(c) Payments from a trust.

(1) Payments to or on behalf of the client.

(A) Payments are considered to be made to the client when any amount from the trust, including an amount from the corpus or income produced by the corpus, is paid directly to the client, or to someone acting on his behalf, such as a guardian or legal representative.

(B) Payments made for the benefit of the client are payments of any sort, including an amount from the corpus or income produced by the corpus, paid to another entity so that the client derives some benefit from the payment. For example, such payments could include purchase of clothing or other items, such as a radio or television for the client. Such payments could also include payment for services the client may require or care, whether medical or personal, that the client may need. Payments to maintain a home would also be payments for the benefit of the client.

(C) A payment to or for the benefit of the client is counted under trust provisions only if such a payment is ordinarily counted as income. For example, payments made on behalf of a client for medical care are not counted in determining income eligibility. Thus, such payments are not counted as income under the trust provision.

(2) Circumstances under which payments can or cannot be made.

(A) In determining whether payments can or cannot be made from a trust, any restrictions on payments, such as use restrictions, exculpatory clauses, or limits on trustee discretion, that may be included in the trust must be considered.

(B) When a trust provides, in some manner, that a payment can be made, even though that payment may be sometime in the future, the trust is treated as providing that payment can be made from the trust.

(d) Revocable trusts.

(1) The corpus is an available resource.

(2) Payments from the corpus or income generated by the corpus, to or for the benefit of the client, excluding payments for medical/social services, are income.

(3) Payments, from the corpus or income generated by the corpus, for any other purpose are a transfer of assets.

(e) Irrevocable trusts.

(1) If there are any circumstances under which payment from an irrevocable trust could be made to or for the benefit of the client, then:

(A) the portion of the corpus, or income generated by the corpus, from which payment could be made is a countable resource;

(B) payments made to or for the benefit of the client, except medical and social services, are countable income; and

(C) payments for any other purpose are a transfer of assets.

(2) Although termed irrevocable, a trust which provides that the trust can only be modified or terminated by a court is a revocable trust because the client or his responsible party can petition the court to amend or terminate the trust.

(3) Although termed irrevocable, a trust that will terminate if a certain circumstance occurs, such as the client leaving the nursing facility and returning home, is a revocable trust.

(4) If there are no circumstances under which payments from some portion or all of an irrevocable trust, or income generated by the trust, could be made available to a client, then the corpus, or portion of the corpus, and the generated income are considered a transfer of assets. The date of transfer is the date the trust was established, or if terms of the trust foreclose payment to the client at a later date, the date payment is foreclosed to the client. The value of the trust, for calculating the penalty period, includes any payments made from the trust for whatever purpose, after the date the trust was established, or if later, the date payment to the client was foreclosed. If funds were added to that portion of the trust after these dates, including interest earned by the trust, the addition of those funds is considered to be a new transfer of assets, effective on the date the funds are added to the trust. Thus, in treating portions of a trust which cannot be paid to a client, the value of the transferred amount is no less than its value on the date of establishment or foreclosure, and may be greater if funds were added to the trust after that date.

(f) Exception trusts. The Omnibus Budget Reconciliation Act of 1993 identifies three types of trusts which are exceptions to the trust provisions stated in subsections (a) - (e) of this section. These exceptions apply only to trusts established on or after August 11, 1993.

(1) Special needs trust.

(A) A special needs trust is a revocable or irrevocable trust established with the assets of a client under age 65 who meets the Supplemental Security Income (SSI) program's disability criteria. The trust must be established for the client's benefit by his parent, grandparent, legal guardian, or a court. The trust must include a provision that the state is designated as the residuary beneficiary to receive, at the client's death, funds remaining in the trust equal to the total amount of Medicaid paid on his behalf. This trust exception continues even after a client becomes age 65 if he continues to meet the disability criteria for the SSI program. However, additions or augmentations to the trust after the client becomes age 65 are a transfer of assets.

(B) The trust is not counted as a resource.

(C) Any distribution to or for the benefit of the client from corpus or income generated by the trust, except payments for medical and social services, is countable income.

(D) Transfer-of-assets provisions do not apply when such a trust is established. However, if assets are transferred to another party from the corpus or income generated by the corpus, then the policy in §15.430 of this title (relating to Transfer of Assets) applies.

(2) Pooled trust.

(A) A pooled trust is a revocable or irrevocable trust containing the assets of a client who meets SSI's definition of disability and which satisfies the following conditions:

(i) it was established and is managed by a non-profit association;

(ii) a separate account is maintained for each beneficiary, but, for investment and management purposes, the accounts may be pooled;

(iii) accounts in the trust are established solely for the benefit of clients who meet SSI's disability criteria, and the trusts are established by a parent, grandparent, or legal guardian of such individuals, by a court, or by the disabled individuals themselves; and

(iv) the trust must include a provision that, to the extent that amounts remaining in a client's account at his death are not retained by the trust, the state is reimbursed in an amount equal to the total amount Medicaid paid on the client's behalf.

(B) The trust is not counted as a resource.

(C) Any distribution to or for the benefit of the client from corpus or income generated by the trust, except payments for medical and social services, is countable income.

(D) Transfer-of-assets provisions do not apply when such a trust is established. If the client's portion of the assets in the trust are transferred to another party, then the policy in §15.430 of this title (relating to Transfer of Assets) applies.

(3) Qualified income trust (QIT).

(A) A QIT is an irrevocable trust established for the benefit of a client and/or his spouse, the corpus of which is composed only of his income (including accumulated income). The trust must include a provision that the state is designated as the residuary beneficiary to receive, at the client's death, funds remaining in the trust equal to the total amount of Medicaid paid on his behalf.

(B) Characteristics are as follows:

(i) the trust must be irrevocable;

(ii) the trust must contain only the client's income. If resources are placed in the trust, it is not a QIT. However, some banks may require nominal deposits, $10 to $20, to establish a financial account to fund the trust. Nominal amounts of the client's resources, or another party's funds, may be used to establish the account without invalidating the trust or being counted as gift income to the client. Once the trust account is established, however, only the client's income should be directed to the trust account;

(iii) the income does not have to be directly deposited into the trust. However, the income for which the trust is established must be deposited into the trust during the month it is received by the client; and

(iv) the trust may be established with any or all sources of a client's income, but an entire income source must be deposited. For example, the trust may be established for a client's private pension income, but not his Social Security income. If a trust is established with only half of the pension income, it is not a QIT.

(C) The trust is not counted as a resource.

(D) Income directed to the trust is disregarded from countable income when testing eligibility for institutional or home/community-based waiver services. Income must be directed to the trust account during the calendar month in which it is received. Any source of non- exempt/non-excludable income which is not directed to the QIT account during the calendar month of receipt is countable income for that month. If countable income exceeds the institutional income limit, the client is income-ineligible for the month. Applicants may not be certified for any calendar month(s) in which they are income- ineligible. For active clients, restitution is requested in the amount of the vendor payment for any calendar month(s) in which they are income-ineligible. Income directed to the trust is not disregarded in determining eligibility for SSI or non-institutional medical assistance programs (Qualified Medicare Beneficiaries, Special Low- Income Medicare Beneficiaries, or 1929(b)). Income paid from the trust for applied income for institutional or home/community-based waiver services or to purchase other medical services for the client is not countable income for eligibility purposes. Income paid from the trust directly to the client or otherwise spent for his benefit is countable income for eligibility purposes. The client cannot use income from the trust to purchase eligibility for any home/community-based waiver. For example, he cannot purchase other medical services to fulfill his service plan in order to meet the 95% Medicaid cost-ceiling to qualify for the Community Based Alternatives Waiver. If the trustee directs to the trust account different sources of income than called for in the QIT, but directs entire sources and countable income remains within the institutional income limit, eligibility is not affected.

(E) If the trust instrument requires that the income placed in the trust must be paid out of the trust for institutional or home/community-based waiver services provided to the client, there is no transfer of assets because the client receives fair market value for the income that was placed into the trust. However, if there is no such requirement or the income is not used for the client's care, transfer of assets provisions apply. The income must be paid out by the end of the month following the month funds were placed in the trust to avoid transfer provisions. Because transfer-of-assets are not imposed for transfers of assets between spouses, QIT provisions that allow payments to or for the benefit of the client's spouse do not result in a transfer of assets penalty.

(F) Institutional care applied income and community-based care co-pay calculations are based on the client's total income (income directed to the trust as well as income not directed to the trust), less the standard applied income deductions. Costs of trust administration are not budgeted in the applied income calculation; however, legal and accounting fees necessary to maintain the trust can be paid from the trust without incurring a transfer penalty.

(G) The income placed in a QIT will be disregarded for eligibility purposes for the first month that the client has a valid signed trust and enough income is placed in the account to reduce the remaining income below the eligibility limit.

(g) Undue hardship.

(1) When application of the trust provisions would work an undue hardship, those provisions do not apply. Undue hardship

exists when application of the trust provisions would deprive the client of medical care so that his health or his life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the client of food, clothing, shelter, or other necessities of life.

(2) Undue hardship does not exist if a client is inconvenienced or must restrict his lifestyle but is not at risk of serious deprivation. Undue hardship relates to hardship to the client, not relatives or responsible parties of the client.

(3) The client must make reasonable efforts to recover assets placed in trust, such as petitioning the court to dissolve the trust. If a client claims undue hardship, DHS must make a decision on the situation as soon as possible but within 30 days of receipt of the request for a waiver of the trust policy. The client has the right to appeal an adverse decision on undue hardship.

§15.430. Transfer of Assets.

(a) Introduction.

(1) The Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (P.L. 103-66) revised policy for transfers of assets that occur on or after August 11, 1993, when an uncompensated value remains.

(2) The penalty for transfers of assets affects payments for institutional facility services (nursing facility care, intermediate care facility for mentally retarded (ICF/MR) vendor services, care in state schools, and care in institutions for mental diseases) and eligibility for home/community-based waiver services. Both the client and the service provider are notified of the penalty period.

(3) Except for state school clients, institutional clients remain eligible for all other Medicaid benefits and continue to receive monthly identification forms for the length of the penalty period. For state school clients, Medicaid eligibility is denied for any penalty period resulting from an uncompensated transfer of assets. This is because the only benefit received is vendor payments.

(4) If a home/community-based waiver client's Medicaid eligibility requires receipt of waiver services, then the client is ineligible for all Medicaid benefits for the length of the penalty period. Denial of home/community-based waiver services based on an uncompensated transfer does not disqualify the client for pure Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB) benefits. If all eligibility criteria for QMB or SLMB are met, the Texas Department of Human Services (DHS) staff certify the client for TP 23 or TP 24, as appropriate.

(5) Clients in the community who are eligible for Medicaid may transfer assets without penalty, provided they do not become institutionalized or apply for home/community-based waiver services. Transfers do not affect eligibility for QMB or SLMB benefits.

(6) In spousal situations, if assets are transferred to a third party before institutionalization or by the community spouse, DHS does not include the uncompensated amount of the transfer in calculating the protected resource amount or countable resources upon application for Medicaid.

(b) Definitions. The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Client - "Client" includes the client himself, as well as:

(A) the client's spouse;

(B) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or client's spouse; and

(C) any person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(2) Assets - "Assets" include all income and resources of the client and of his spouse. This includes income or resources which the client or his spouse is entitled to but does not receive because of any action by:

(A) the client or his spouse;

(B) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or his spouse; or

(C) any person, including a court or administrative body, acting at the direction or upon the request of the client or his spouse. Examples of actions which would cause income or resources not to be received are: irrevocably waiving pension income, waiving the right to receive an inheritance, not accepting or accessing injury settlements, and tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of the plaintiff.

(c) Transfer of income.

(1) The client may incur a transfer penalty by transferring income on or after August 11, 1993. Transfers of income include:

(A) waiving the right to receive an inheritance even in the month of receipt;

(B) giving away a lump sum payment even in the month of receipt; or

(C) irrevocably waiving all or part of federal, state, or private pensions or annuities.

(2) The date of transfer is the date of the actual change in income, if on or after August 11, 1993. Interspousal transfers of income are permitted (for example, obtaining a court order to have community property pension income paid to a community spouse).

(3) Because revocable waivers of pension benefits can be revoked and the benefits reinstated, no uncompensated value is developed, and no transfer-of-assets penalty is incurred. Such waivers are subject to the utilization-of-benefits policy, and the client must apply for reinstatement of the full pension amount or he is ineligible for all Medicaid benefits.

(d) Exceptions to transfers of assets.

(1) Transfer of the client's home does not result in a penalty when the title is transferred to his:

(A) spouse, who lives in the home (the transfer penalty applies when the community-based spouse transfers the home without full compensation);

(B) minor or disabled child (a disabled child must meet Social Security Administration disability criteria);

(C) sibling who has equity interest in the home and has lived there for at least one year before the client's institutionalization; or

(D) son or daughter (other than a disabled or minor child) who lived in the home for at least two years before the client's institutionalization and provided care that prevented institutionalization. To substantiate this claim, there must be a written statement

from the client's attending physician or a professional social worker familiar with the case documenting the care provided by the son or daughter.

(2) Assets, including the client's home, may be transferred without resulting in a penalty when

(A) transferred to the client's spouse or to another for the sole benefit of that spouse, or from the client's spouse to another for the sole benefit of that spouse;

(B) transferred to the client's child, or to a trust (including a trust described in §15.417(f) of this title (relating to Exception Trusts)) established solely for the benefit of the client's child. The child must meet Social Security Administration disability criteria;

(C) transferred to a trust, including a trust as specified in §15.417(f) of this title (relating to Exception Trusts), established for the sole benefit of an individual under 65 years of age who is disabled as defined under SSI;

(D) satisfactory evidence exists that the client intended to dispose of the resource at fair market value;

(E) satisfactory evidence exists that the transfer was exclusively for some purpose other than to qualify for Medicaid;

(F) imposition of a penalty would cause undue hardship;

(G) a client changes a joint bank account to establish separate accounts to reflect correct ownership of and access to funds; or

(H) a client purchases an irrevocable funeral arrangement or assigns ownership of an irrevocable funeral arrangement to a third party.

(3) In determining whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual, there must be a written instrument of transfer, such as a trust document, which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. The instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved. When the instrument or document does not so provide, there can be no exemption from the penalty.

(4) The situations in §15.430(d)(1)-(3) of this title (relating to Transfer of Assets) are the only situations in which an uncompensated transfer does not result in a penalty for institutional care or home/community-based waiver services. Under the transfer provisions of OBRA 1993, the home is not an excluded resource for institutional clients. Therefore, if the home of an institutionalized client is transferred, unless the transfer meets one of the criteria in §15.430(d)(1)-(3) of this title (relating to Transfer of Assets), it could affect payment for the client's institutional care.

(e) Look-back period.

(1) Penalties may be assessed for transfers occurring on or after the look-back date. Penalties cannot be assessed for time frames prior to the look-back period.

(2) The law provides for a 36-month look-back period for most uncompensated transfers of assets. However, there is a 60-month look- back period, except for trusts specified in §15.417(f) of this title (relating to Exception Trusts) for:

(A) any payment from the corpus or income generated by the corpus of a revocable trust that is not given to the client; and

(B) an irrevocable trust, for that portion of the corpus or income earned by the corpus, from which no payment could be made to the client under any circumstance. The date of the transfer of this type of trust is the later of the date the trust is established or the date on which payment is foreclosed to the client.

(3) The look-back period is 36 months (or 60 months) from the later of the date of:

(A) institutionalization; or

(B) Medicaid application.

(4) When a client is already a Medicaid recipient before entering a nursing facility (NF), intermediate care facility for mentally retarded (ICF-MR), state school, or institution for mental diseases (IMD), the look-back period begins with institutional entry.

(5) When a client applies and is certified for Medicaid more than once because of multiple institutional stays or periods of ineligibility, the look-back date is based on the later of the earliest application for Medicaid or the initial entry into the facility.

(6) When a client applies for a home/community-based waiver program, the look-back period is 36 months or 60 months from the later of the date:

(A) of application for waiver services (completed, signed application form is received in DHS office); or

(B) after application that the client transfers assets.

(7) When a client applies for institutional care or a home/community- based waiver but is not certified and then reapplies, a new look-back period is based on the latest application.

(8) When a client applies and is certified for a home/community-based waiver program, subsequently is denied, and reapplies for waiver services, the initial look-back period is still in effect.

(9) When a look-back period is established, the client is certified, and then moves from an institutional program to a home/community-based waiver program or vice-versa, the initial look-back period is still in effect. This is true even when there is a gap in eligibility periods.

(10) Any transfers of assets that occur after the look-back period may be assessed a penalty.

(f) Calculation of penalty period.

(1) There is no limit to the penalty period under OBRA 1993. The penalty period is determined by dividing the uncompensated value of all assets transferred by the average monthly cost of nursing facility care for a private pay patient.

(2) Fractional remainders are rounded down. This penalty period calculation applies to the transfer of both income and resources.

(3) The same penalty period calculation is used for clients who apply for home/community-based waiver programs. Penalty periods continue to run if a client moves from an institutional program to a home/community-based waiver program or vice-versa.

(4) The penalty period begins the month of transfer. However, a new penalty period cannot be imposed while a previous penalty period is still in effect. Therefore, the penalty periods assessed under OBRA 1993 rules for multiple transfers that overlap run separately but consecutively.

(5) If a penalty period ends and a subsequent transfer occurs, a new penalty period is established effective the month of the subsequent transfer. This means there may be a gap between penalty periods.

(6) When multiple transfers occur during the look-back period in such a way that the penalty periods for each overlap, the transfers are treated as a single event. The uncompensated values are lumped together and divided by the average monthly rate for a private-pay patient in a nursing facility. If multiple transfers occur in such a way that the penalty periods do not overlap, then the transfers are treated as separate events and the penalty periods are calculated separately.

(g) Apportioning penalty periods between spouses.

(1) When a spouse transfers an asset that results in a penalty for the client, the penalty period must, in certain instances, be apportioned between the spouses. Both spouses must be eligible for Medicaid institutional services or home/community-based waiver services during the same time period for apportionment to occur. Apportionment occurs when:

(A) the spouse is institutionalized and is Medicaid eligible; or

(B) the spouse would be eligible for home/community-based waiver services; and

(C) some portion of the penalty against the client remains at the time the above conditions are met.

(2) When one spouse is no longer subject to a penalty (for example, the spouse no longer receives institutional or home/community-based waiver services, or the spouse dies), the remaining penalty period applicable to both spouses must be served by the remaining spouse.

(h) Return of transferred asset.

(1) For transfers occurring on or after August 11, 1993, if the transferred asset is subsequently returned to the client, the transfer is nullified and the penalty period is erased retroactive to the month of transfer. The asset is treated as though never transferred, and is excluded or counted, as appropriate, in determining the client's eligibility for those months in which the asset was in someone else's possession. In spousal cases, if the client/spouse transferred an asset before the client entered the nursing facility and the asset is returned after institutionalization, the protected resource amount (PRA) must also be recalculated.

(2) For a penalty period to be nullified, all of the asset in question or its fair market value must be returned to the client. When only part of an asset or its equivalent value is returned, the penalty period can be reduced but not eliminated. For example, if only half the value of the asset is returned, the penalty period can be reduced by one-half. Payment on the principal of a note is the return of a transferred asset and reduces the penalty accordingly.

(i) Spouse-to-spouse transfers under spousal impoverishment provisions.

(1) There are no restrictions on interspousal transfers occurring from the date of institutionalization to the date of the MAO application; the reason is that at application and through-out the initial eligibility period, (12 full months following the medical effective date) the combined countable resources of the couple are considered in determining eligibility. For the same reason, interspousal transfers are also permitted before institutionalization. A penalty can result when the community spouse transfers assets to a third party, not for the sole benefit of either spouse.

(2) To remain eligible at the end of the initial eligibility period, the institutionalized spouse must reduce resources to which he has access at least to the resource limit. If the institutionalized spouse chooses, he may, during the initial eligibility period, transfer resources from his name to the community spouse's name with no penalty applied to the transfer. The transfer-of-assets policy applies only to transfer of assets for less than fair market value to individuals other than the community spouse if not for the sole benefit of that spouse.

(3) Transfer penalties apply when the community spouse transfers his separate property before institutionalization, or after institutionalization but before the MAO certification. Transfer penalties apply when the community spouse transfers community property both before and after institutionalization, if not for the sole benefit of the spouse.

(j) Compensation. Compensation, in the form of funds, real property, or services, must actually have been provided to the client. Future compensation does not satisfy the compensation requirement except for annuities which are actuarially sound. Compensation, however, may be in the form of payment or assumption of a legal debt owed by the individual making the transfer. Compensation is not allowed for services that would be normally provided by a family member (such as house painting or repairs, mowing lawns, grocery shopping, cleaning, laundry, preparing meals, transportation to medical care). The client must provide valid receipts for financial expenditures or written statements from the people who were paid to provide the services. If the client receives additional cash compensation that was not a part of the transfer agreement from the party who received the transferred asset, the uncompensated value of the transferred asset must be reduced by the amount of the additional compensation and as of the date the compensation is received. Cash compensation includes direct payments to a third party to meet the client's food, shelter, or medical expenses, including nursing facility bills, incurred after the date of the transfer. Compensation for a transferred asset must be provided according to terms of an agreement established on or before the date of transfer. This agreement must have been established exclusively for purposes other than obtaining or retaining eligibility for Medicaid services.

(k) Client participation in transfers. Any action by the client's co- owner(s) to eliminate the client's ownership interest or control of a joint asset, with or without the client's consent, is a transfer of assets. Placing another person's name on an account or other asset that results in limiting the client's control of an asset (right to dispose) is a transfer of assets.

(l) Rebuttal procedures.

(1) Notification of opportunity for rebuttal. If any amount of uncompensated value exists, DHS advises the client or responsible party of the amount of uncompensated value and the length of the penalty period. The penalty period applies unless the client provides convincing evidence that the disposal was solely for some purpose other than to obtain Medicaid services. If, within the periods specified in this paragraph, the client or responsible party makes no effort to rebut the presumption that the transfer was solely to obtain Medicaid services, DHS will assume that the presumption is valid. The rebuttal period is five workdays after oral notification (by DHS to the client) and seven workdays after written notification.

(2) Rebuttal of the Presumption. Transfer-of-assets statutes presume that all transfers for less than fair market value

are to obtain Medicaid services. The client or responsible party is responsible for providing convincing evidence that the transaction in question was exclusively for some other purpose. To rebut the presumption, the client or responsible party must provide a written statement and any relevant documentation to substantiate his statement. The statement, oral or written, must include at least the following:

(A) purpose for transferring the asset;

(B) attempts to dispose of the asset at fair market value;

(C) reason for accepting less than fair market value for the asset;

(D) means of or plan for self-support after the transfer; and

(E) relationship to the person to whom the asset was transferred.

(m) Undue Hardship.

(1) A client may claim undue hardship when imposition of a transfer penalty would result in discharge to the community and/or inability to obtain necessary medical services so that his life is endangered. Undue hardship also exists when imposition of a transfer penalty would deprive the client of food, clothing, shelter, or other necessities of life. Undue hardship relates to hardship to the client, not the relatives or responsible parties of the client. Undue hardship does not exist when imposition of the transfer penalty merely causes the client inconvenience or when imposition might restrict his lifestyle but would not put him at risk of serious deprivation.

(2) Undue hardship may exist when any one of the following conditions specified in subparagraphs (A) - (C) of this paragraph exists:

(A) location of the receiver of the asset is unknown to the client, or other family members, or other interested parties, and the client has no place to return in the community and/or receive the care required to meet his needs;

(B) client can show that physical harm may come as a result of pursuing the return of the asset, and the client has no place to return in the community and/or receive the care required to meet his needs; or

(C) receiver of the asset is unwilling to cooperate with the client and DHS, and the client has no place to return in the community and/or receive the care required to meet his needs.

(3) If a client claims undue hardship, DHS must make a decision on the situation as soon as possible but within 30 days of receipt of the request for a waiver of the penalty. The client has the right to appeal an adverse decision on undue hardship.

§15.435. Liquid Resources.

(a)-(f) (No change.)

(g) Promissory notes, loans, and property agreements.

(1) A negotiable, secured promissory note, loan, or property agreement is a countable resource. Negotiable means that the owner (lender) has the legal right to sell the instrument (for valuable consideration, i.e. cash) to anyone. [~~or that he possesses a transferable interest in the instrument that can be converted to cash.~~] Secured means the instrument identifies a particular asset of at least equal value to the face value of the instrument that can be reclaimed by the seller, should the instrument fall into default. The owner also possesses a transferable interest in the instrument that can be converted to cash and could be subject to a transfer of assets penalty if not retained or spent down properly. The terms of the loan may be in writing or [~~they may~~] be an [~~informal~~] oral agreement. If the agreement is oral, the client is responsible for furnishing a statement of facts of the agreement signed by the second party. Real property, sold or exchanged for a negotiable note, is not a transfer for less than fair market value if the note is secured by the original property or by another redeemable resource of equal or greater value. A formal written loan agreement is a form of promissory note. [~~A note cannot be excluded under the $6,000/6% policy specified in §15.443 of this title (relating to Resources Essential to Self-support (Real and Personal Properties). This exclusion applies only to real property or a degree of interest in real property, such as mineral rights.~~]

(2) A negotiable non-secured promissory note, loan, or property agreement is a countable resource and a potential transfer of assets. Non-secured means the seller has no recourse to reclaim the original or like resource should the purchaser cease payments. By not securing the note, the seller has purposefully reduced the value of the note. The actual fair market value of the note should be determined and the difference between the actual market value of the note and the value of the original resource is a transfer of assets for less than fair market value. The actual fair market value of the note remains a countable resource. Normal transfer of assets rebuttal policy applies. If payments on the note are being made, the interest is considered as income. Payment on the principal reduces the transfer penalty. The transfer penalty period is recalculated at each annual review. If the expiration of the penalty period falls before the next scheduled annual review, a special review should be scheduled accordingly.

(3) A non-negotiable promissory note, loan, or property agreement is not a countable resource because it has no marketable value. Non- negotiable means the seller cannot sell or transfer ownership interest in the note, causing the note to have no market value. Therefore, the dollar value of the original resource is considered to be transferred for less than fair market value, subject to normal transfer of asset penalties, if the instrument was created within the look-back period. If payments are being received, the transfer penalty must be reduced based on the amount of principal received. Both the principal and interest are considered as income in the month received. The transfer penalty period is recalculated at each annual review. If the expiration of the penalty period falls before the next scheduled annual review, a special review should be scheduled accordingly. Normal transfer of assets rebuttal policy applies.

(4) When determining the value of a negotiable promissory note, loan, or property agreement, the outstanding principal balance is the countable value unless the client furnishes reliable evidence from a knowledgeable source that the instrument cannot be sold for the amount of the outstanding principal balance. A knowledgeable source is someone recognized as being in the business of purchasing notes.

(5) If a client furnishes evidence to establish a lesser value on a note, the market value established by the knowledgeable source is the countable value of the resource. However, if the client/responsible party placed any restrictions/encumbrances (such as creating a note with interest due of less than the market value at the time the note was made or the note becomes paid in full at the time of the client's death), then the difference in the current market value and the outstanding principal balance is a transfer of assets for less than fair market value.

(6) Although the seller/client keeps title to the original property until the promissory note, loan, or property agreement is

paid in full, the original property is not counted as a resource (the value of the negotiable instrument is the resource). The property is not available while the buyer is making a good faith effort (making scheduled payments) in fulfilling the contractual obligation. Policy concerning these resources is specified in §15.455(e)(7) of this title (relating to Unearned Income).

(7) A note cannot be excluded under the $6,000/6% policy specified in §15.443 of this title (relating to Resources Essential to Self-support (Real and Personal Properties). This exclusion applies only to real property, or a degree of interest in real property, such as mineral rights.

(h) -(q) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716213
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

40 TAC §§15.430–15.434

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.430. Client Participation in Transfer of Resources.

§15.431. Transfer of Resources–July 1, 1988, and After.

§15.432. Exceptions to Transfer Resources–July 1, 1988 and After.

§15.433. Transfer of Resources Penalty Period.

§15.434. Spouse-to-spouse Transfers Under Spousal Impoverishment Provisions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716214
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter E. Income

40 TAC §15.455

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.455. Unearned Income.

(a) (No change.)

(b) Support and maintenance (S/M). The following requirements apply to support and maintenance.

(1) Support and maintenance not counted as income. Support and maintenance are not counted as income if:

(A) eligibility is being tested for a waiver program; for example, Community Living Assistance and Support Services (CLASS), the Community Based Alternatives (CBA) [~~Nursing Facility Waiver (NFW)~~], Home and Community-Based Services (HCS), and Medically Dependent Children's Program (MDCP). The 1929(b) program is not a waiver program;

(B) - (I) (No change.)

(2 - (9) (No change.)

(c) (No change.)

(d) Annuities, pensions, and retirement plans. The following paragraphs describe sources of unearned income.

(1) - (3) (No change.)

(4) The client may request that certain pensions and retirement payments be reduced. If the reduction is irrevocable, the department accepts the reduced amount in determining the client's eligibility. However, effective August 11, 1993, an irrevocable waiver of income may result in a transfer of assets penalty. If the client is receiving a reduced benefit, the department must obtain a written statement from an official of the organization. If the pension or retirement payments are revocable, the client must apply for maximum entitlements. The amount of the original benefit, the amount of the reduced benefit, the date of the reduction, and information about the revocability or irrevocability of the reduction must be included in the statement.

(5) - (6) (No change.)

(e) Other unearned income. Other sources of unearned income include:

(1) - (4) (No change.)

(5) gifts, inheritances, support, and alimony. Expenses involved in obtaining the income are excluded:

(A) - (C) (No change.)

(D) the effective date of receipt of inheritance and disclaimers is described in clauses (i) - (iii) of this subparagraph ;

(i) - (ii) (No change.)

(iii) a disclaimer to an inheritance;

(I) prior to August 11, 1993, a[~~A~~] disclaimer to an inheritance is not considered as a transfer of resources if transacted before [~~prior to~~] receipt of an inheritance. The disclaimer must be

a written statement acknowledged before a notary or other person authorized to take acknowledgment of conveyances of real property;

(II) after August 11, 1993, a disclaimer of inheritance may result in a transfer of assets penalty regardless of the date the disclaimer is signed or effective;

(6) - (10) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716215
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 181. General Rules of Practice and Procedures

Subchapter A. General Provisions

40 TAC §181.28

The Texas Commission for the Deaf and Hard of Hearing proposes new §181.28, concerning general rules of practice and procedures. The new section is proposed to clarify the Camp SIGN program.

David W. Myers, Executive Director, has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Myers also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of this new section will be a better understanding of the operation of the Certification of Deafness for Tuition Waiver program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the section as proposed.

Comments on this proposed section may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The new section is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other Statute, code or article is affected by this proposed new section.

§181.28. Camp Sign.

(a) Description of Services. Camp SIGN is a learning environment for students who are deaf or hard of hearing which is free of communication barriers. The goal is to have all students who are deaf or hard of hearing regardless of their communication mode participate in the program.

(b) Eligibility. Camp is open to boys and girls who are deaf or hard of hearing between the ages of 8 and 17 and residents of Texas.

(c) Counselor in Training (CIT). A program that focuses on developing leadership skills to prepare boys and girls aged 16 and 17 to become future camp counselors and leaders.

(d) Staffing. Camp SIGN staff are chosen on the basis of criteria to accommodate the needs of the campers and to serve as role models for the campers. Staff are recruited from professionals working in the field with individuals who are deaf or hard of hearing. Staff must be able to communicate effectively with children who use American Sign Language, English or other modes of communication. Junior Counselor Staff must be at least 18 years old and Senior counselor staff must be at least 21 years old. Staff are hired by the contracted campsite based on recommendations of the Commission.

(e) Campsites. Any contracted campsite will be obtained through competitive bid or through donation. The campsite must be ADA accessible, and provide adequate facilities and a variety of learning experiences for the campers.

(f) Application Fee. A fee of $25 is required to process an application for Camp SIGN. This fee is refundable only if the child is determined ineligible to attend camp, and refund is requested in writing.

(g) Sliding Scale Fee. Upon receipt of the application the family economic status is reviewed and a sliding scale may be applied.

(h) Behavior Problems. Children that have behavior problems that constantly disrupt camp activities or threaten other campers or staff will be sent home and all fees forfeited.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716138
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 451–8494

♦ ♦ ♦

Chapter 182. Specialized Telecommunications Devices Assistance Program

Subchapter A. Definitions

40 TAC §182.3

The Texas Commission for the Deaf and Hard of Hearing proposes new §182.3, concerning specialized telecommunications device assistance program. The new section is proposed to define key terms used for the operation of the new Specialized Telecommunications Device Assistance Program.

David W. Myers, Executive Director, has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Myers also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of this new section will be a better understanding of the terms used in the operation of the Specialized Telecommunications Device Assistance Program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the section as proposed.

Comments on this proposed section may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The new section is proposed under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed new section.

§182.3. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Application-The form the commission uses to gather and document information about an individual applying for assistance under this program.

Access to a telephone line-Ability to use, on a regular basis, a telephone line and number at place of residence or place of business for receiving or placing telephone calls.

Deaf-blind person-A natural person or individual who has a hearing impairment, without regard to degree, and regardless of whether the person also has speech impairment, that inhibits the person's comprehension of or communication with others and who has a central visual acuity of 20/200 or less in the better eye with corrective lenses or a field of vision no greater than 20 degrees.

Legal guardian-A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

Program-Specialized Telecommunications Devices Assistance Program.

PUC-Public Utility Commission of Texas.

Resident-An individual who resides within the state of Texas with the intent to remain in Texas.

RTAC-Relay Texas Advisory Committee.

Basic specialized telecommunications devices-A device or devices determined to be necessary and essential to facilitate access to the telephone system by individuals who are deaf, deaf-blind, hard of hearing or speech impaired.

Speech-impaired person-A natural person who has an impairment of the articulation of speech sounds, fluency and/or voice that would inhibit the person's ability to effectively communicate with others.

USF-Universal Service Fund

Vendor-An entity or a person that is registered with the PUC and can sell basic specialized telecommunication devices as defined under this program.

Voucher-A document of record to be exchanged with a vendor guaranteeing payment of up to but not exceeding the amount specific for the basic specialized telecommunications devices listed on the face of the voucher.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716139
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 451–8494

♦ ♦ ♦

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Preventive Services

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §700.110 and §700.112, concerning retention of closed-after-investigation/ruled out/case records, and case records not involving abuse/neglect or conservatorship; and proposes new §700.523, concerning removal of alleged perpetrator role information, in its Child Protective Services chapter. The purpose of the amendments and new section is to implement Section 75 of SB 359, state legislation which was enacted in 1997, regarding removal of certain investigation information from records. The rules require timely notification to former alleged perpetrators of the right to request removal of role information and the provision of a form on which to request removal of the information; establish procedures for requesting removal of role information and state that a request that does not meet the procedures will be denied; require that the requester will be informed of the denial in a timely manner; address the processing of the removal of the information after a properly made request is received; establish the actions TDPRS will take if a request for release of the information is received after a properly made request for removal of role information is received; and provide that TDPRS may expunge cases that meet criteria identified in the rules in a shorter time frame than otherwise identified in rules in order to remove the requested information.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will not be significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide former alleged perpetrators with a timely, efficient and adequate response to their requests that certain information be removed from department records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Kay Love at (512) 438-3305 in TDPRS's Child Protective Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-068, Texas Department of Protective and Regulatory Services E-205,

P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Administration

40 TAC §700.110, §700.112

The amendments are proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.110. Retention of Closed-After-Investigation/Ruled Out/Case Records.

(a) No risk case records.

(1) Child Protective Services (CPS) case [~~Case~~] information is retained 18 months after the case is closed if the Texas Department of Protective and Regulatory Services (TDPRS) has concluded that risk of abuse or neglect is ruled out and that:

(A) (No change.)

(B) CPS [~~Child Protective Services (CPS)~~] is not in a position to assess risk, as specified in §700.514 of this title (relating to Risk Assessment and Safety Evaluation).

(2) (No change.)

(3) TDPRS may expunge a CPS case under §700.110(a) of this title (relating to Retention of Closed-After-Investigation/Ruled Out Case Records) earlier than 18 months if:

(A) CPS verifies that a person is eligible for removal of role information in all of the investigations in the case as specified in §700.523 (c) and (d) of this title (relating to Removal of Alleged Perpetrator Role Information); and

(B) the case does not involve removal of a child, CPS or a family preservation contractor did not provide services after the investigation, and all of the investigations in the case meet the criteria in §700.110(a)(2) of this title (relating to Retention of Closed-After-Investigation/Ruled Out Case Records).

(b) (No change.)

§700.112. Case Records Not Involving Abuse/Neglect or Conservatorship.

(a) Closed non-abuse/neglect case information is documentation of a Child Protective Services (CPS) case in which the Texas Department of Protective and Regulatory Services (TDPRS) took some action that did not include any of the following:

(1) (No change.)

(2) CPS [~~TDPRS~~] did not provide family preservation services to the family or the children; and

(3) TDPRS's CPS [~~Office of Protective Services for Families and Children~~] was not designated as the child's managing conservator in a CPS case.

(b) (No change.)

(c) TDPRS retains non-abuse/neglect case information for three years after closure. Exceptions: [~~Exception:~~]

(1) Intakes that are closed without assignment for investigation are retained for only 18 months after closure.

(2) A case that contains only one or more investigations that are closed administratively for the reasons specified in subparagraph (A) of this paragraph may be expunged earlier than three years if the conditions in subparagraph (B) of this paragraph are met:

(A) The investigation closure reason must be one of the following:

(i) allegation already investigated;

(ii) preliminary investigation of anonymous report;

(iii) assessment only; or

(iv) other.

(B) Conditions that must be met for paragraph (2) of this subsection to apply are:

(i) CPS finds that a person is eligible for removal of role information in all of the investigations in the case as specified in §700.523 of this title (relating to Removal of Alleged Perpetrator Role Information); and

(ii) the case does not involve removal of a child, CPS or a family preservation contractor did not provide services after the investigation, and all of the investigations in the case meet the criteria in §700.110(a)(2) of this title (relating to Retention of Closed-After-Investigation/Ruled Out Case Records).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716299
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter E. Intake, Investigation, and Assessment

40 TAC §700.523

The new section is proposed under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The new section implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.523. Removal of Alleged Perpetrator Role Information.

(a) Individuals entitled to removal of role information. An individual alleged to have committed abuse or neglect of a child is entitled to request removal of information from the records of the Texas Department of Protective and Regulatory Services (TDPRS) concerning that person's role as an alleged perpetrator in

an investigation conducted by Child Protective Services if all of the allegations against that individual in that investigation are ruled-out:

(1) at the conclusion of an investigation which has been approved for closure by a supervisor;

(2) as the result of an administrative review of investigative findings conducted under §700.516 of this title (relating to Administrative Review of Investigation Findings);

(3) as the result of an appeal from administrative review of investigative findings to the Texas Department of Protective and Regulatory Services (TDPRS) Ombudsman under §744.3 of this title (relating to Ombudsman Office Reviews);

(4) as the result of a release hearing conducted under §700.601 of this title (relating to Definitions); or

(5) as the result of any other final ruling which has the legal effect of ruling out all allegations against that individual stemming from that investigation.

(b) Notification to alleged perpetrator about right to request removal of role information. Within 15 days following the conclusion of an investigation or other final ruling as described in subsection (a) of this section, TDPRS shall mail written notice to the former alleged perpetrator informing that individual of the right to request removal of certain information and of the procedures which must be followed in order to exercise that right.

(c) Procedures to request removal of role information. A request to remove role information shall not be deemed to be properly made unless that request:

(1) is submitted on a completed form prescribed by TDPRS and provided to the former alleged perpetrator for this purpose, or is submitted as a written request containing substantially equivalent information which enables TDPRS to locate the investigation in question and which clearly states the purpose of the request;

(2) is signed by the former alleged perpetrator (or his parent if the former alleged perpetrator is a minor);

(3) is mailed or delivered to TDPRS within 45 days after the mailing date of the notice required in subsection (b) of this section; and

(4) is mailed or delivered to an address specified by TDPRS on its prescribed form for this purpose.

(d) Process for removal of role information. Upon receipt of a request for removal of role information which meets all of the criteria set forth in subsection (c) of this section, TDPRS shall initiate procedures to remove from its paper and computer records any information which would tend to reveal that the requestor was an alleged perpetrator of abuse and neglect in the investigation in which all allegations against the requestor were ruled out. TDPRS shall complete the process of removal of role information as expeditiously as possible, not to exceed a period of 90 days from its receipt of a properly submitted request.

(e) Release of information pending removal of role information. During the period of time following the receipt of a request properly made under subsection (c) of this section, and prior to the completion of the removal of information required in subsection (d) of this section, TDPRS will not release any information which is subject to removal under subsection (d) to anyone who might otherwise be entitled to receive a copy of the investigation records, unless TDPRS is ordered to release that information pursuant to a valid court order.

(f) Denial of request to remove role information. A request for removal of role information which does not meet the criteria set out in subsection (c) of this section will be denied. Notice of the denial and the reasons for the denial will be provided to the requestor within 30 days of the receipt by TDPRS of the request for removal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716300
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438-3765

♦ ♦ ♦

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §700.701 and §700.705, concerning services to families and family service plan; proposes the repeal of §§700.702-700.704, concerning family preservation services, intensive family-preservation services, and reunification support services; and proposes new §§700.702-700.704, concerning family preservation services, family reunification services, and case closure of family preservation or reunification cases, in its Child Protective Services chapter. The purpose of the amendments, repeals, and new sections is to reorganize the family preservation and reunification services descriptions. Also, moderate family preservation services and two types of intensive reunification services are added.

Cindy Brown, Budget and Analysis Director, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Ms. Brown also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be compliance with Legislative mandates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Char Bateman at (512) 438-4120 in TDPRS's Child Protective Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-021, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter G. Services for Families

40 TAC §700.701, §700.705

The amendments are proposed under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. The amendments are also proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the

department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that department.

The amendments implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.701. Services to Families.

(a) Definition. The Texas Department of Protective and Regulatory Services' (TDPRS's) Child Protective Services (CPS) [~~for Families and Children (PSFC)~~] department provides family-preservation and family-reunification services for [~~operates a program of services to~~] families. These [~~The program consists of~~] services are provided to families and children in their own homes to:

(1)-(3) (No change.)

(b) Criteria. CPS [~~PSFC~~] provides family preservation or reunification services when:

(1) (No change.)

(2) the family cannot reduce the risk of abuse or neglect without CPS [~~PSFC~~] assistance; and

(3) CPS [~~PSFC~~] can provide or arrange for services to:

(A) protect the child in the home or return the child home;

(B) (No change.)

(C) enable the family to function effectively without CPS [~~PSFC~~] assistance in the future.

(c) CPS's [~~PSFC's~~] family preservation and reunification services include [~~program includes services of three~~ types]:

(1) regular, moderate, and intensive family preservation services;

(2) regular, early intensive, and intensive family reunification [~~family-preservation~~] services; and

(3) (No change.)

§700.705. Family Service Plan.

(a) Initial time frame. Within 45 days after the case is opened for family-preservation services or family-reunification services, as defined in §700.702 and §700.704 of this title (relating to Family Preservation Services and Family Reunification Services), [~~deciding to provide family preservation services or intensive~~ family-preservation services as defined in §700.702(a) and §700.703(a) of this title (relating to Family Preservation Services and Intensive Family-Preservation Services),] the Texas Department of Protective and Regulatory Services' (TDPRS's) Child Protective Services (CPS) [~~for Families and Children (PSFC)~~] department must establish a detailed written plan of services for the family. A new or revised family service plan is developed at least every six months. The requirements for family plans of service and service plan reviews for families receiving services when TDPRS has conservatorship of a child in substitute care are specified in §700.1332 and §700.1333 of this title (relating to the Family's Service Plan and Case Plan Review).

(b) Purposes. The purposes of the family service plan for families receiving family preservation and family reunification services are to:

(1) (No change.)

(2) ensure that services progress as quickly as possible towards enabling the family to:

(A) (No change.)

(B) function effectively without CPS [~~PSFC~~] assistance.

(c) Required content. The family service plan must:

(1) include the reasons CPS [~~PSFC~~] is involved with the family;

(2) include an assessment, developed with the family, of family problems and strengths and resources that can be utilized to help the family reduce [~~are available related to~~] the risk of child abuse and neglect;

(3) identify the goals or [~~of~~] changes needed to reduce the level of risk;

(4) (No change.)

(5) describe the services CPS [~~PSFC~~] must provide to help the family complete those tasks; [~~and~~]

(6) indicate how CPS [~~PSFC~~] will evaluate the family's progress in completing each task and individual goal ; and [~~.~~]

(7) indicate the period of time and frequency of the tasks and services.

(d) Parents' participation. The worker must work with the parents to develop the family service plan. After completing the plan, the worker must ask the parents to sign it, and give them a copy of it. If either parent will not sign the plan, the worker must document on the plan the reasons why a parent will not sign and must give the parent a copy of the plan.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716296
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

40 TAC §§700.702–700.704

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. The repeals are also proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, or

other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that department.

The repeals implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.702. Family Preservation Services.
§700.703. Intensive Family-Preservation Services.
§700.704. Reunification Support Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716297
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

The new sections are proposed under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. The new sections are also proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that department.

The new sections implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.702. Family-Preservation Services.

Family-preservation services are protective services provided to a family whose children have not been removed from the home. The Texas Department of Protective and Regulatory Services' (TDPRS's) Child Protective Services (CPS) department may provide family preservation services to any family that needs Protective Services for Families and Children (PSFC) assistance to reduce the likelihood that a child in the family will be abused or neglected in the foreseeable future. There are three levels of family-preservation services - regular, moderate, and intensive family preservation services. The level of service is determined by the degree of the risk of removal. Any of these services may be provided directly or through contracts.

(1) Regular family-preservation services.

(A) Definition. Regular family-preservation services are protective services provided to a family whose children are not in a court- ordered placement. CPS may provide family- preservation services to any family that needs CPS assistance to reduce the likelihood that a child in the family will be abused or neglected in the foreseeable future.

(B) Objectives. The objectives of family preservation services are to:

(i) help the parents build on family strengths and resources in order to reduce the risk of abuse or neglect; and

(ii) enable the family to function without PSFC assistance after the case is closed.

(C) Criteria. All of the criteria specified in clauses (i)-(iv) of this subparagraph must be satisfied before CPS provides family- preservation services:

(i) reducing the risk of abuse or neglect to a child is likely to be achieved with CPS services within 180 to 270 days;

(ii) at least one child is at risk of abuse or neglect in the foreseeable future or may be at risk of removal from the home and a written, viable safety plan is in place;

(iii) services are likely to protect the family's children from abuse or neglect in the immediate or short-term future; and

(iv) services are likely to provide a safe alternative to TDPRS obtaining conservatorship.

(2) Moderate family-preservation services.

(A) Definition. Moderate family-preservation services are a form of intensive family-preservation services provided to families that need assistance to protect a child from abuse or neglect in the foreseeable future. Families receiving moderate services have high risk of abuse or neglect and the alternative to providing moderate services may be to remove the child from the home.

(B) Objectives. The objectives of moderate family-preservation services are to

(i) protect the child from an immediate or short-term danger of abuse or neglect;

(ii) help the parents build on family strengths and resources in order to reduce the risk of abuse or neglect; and

(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.

(C) Criteria. All of the criteria specified in clauses (i)-(v) of this subparagraph must be satisfied before CPS provides moderate family- preservation services:

(i) the family is willing and able to participate in the services;

(ii) reducing the risk of abuse or neglect to a child is likely to be achieved in 90 to 180 days;

(iii) at least one child is at risk of abuse or neglect in the foreseeable future or may be at risk of removal from the home and a written, viable safety plan is in place;

(iv) moderate services are likely to protect the family's children from abuse or neglect in the immediate or short-term future; and

(v) services are likely to provide a safe alternative to TDPRS obtaining conservatorship.

(3) Intensive family-preservation services.

(A) Definition. CPS provides intensive family-preservation services to families that need intensive assistance to protect a child from abuse or neglect in the immediate or short-term future. The alternative to providing intensive services is to remove the child from the home.

(B) Objectives. The objectives of intensive family-preservation services are to:

(i) protect the child from an immediate or short-term danger of abuse or neglect;

(ii) help the parents build on family strengths and resources in order to reduce the risk of abuse or neglect; and

(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.

(C) Criteria. All of the criteria specified in clauses (i)-(v) of this subparagraph must be satisfied before CPS provides intensive family- preservation services:

(i) the family is willing and able to participate in the services;

(ii) the objectives specified in subparagraph (B) of this paragraph are likely to be achieved in 60 to 120 days;

(iii) at least one child is at risk of removal from the home and a written, viable safety plan is in place;

(iv) intensive services are likely to protect the family's children from abuse or neglect in the immediate or short-term future; and

(v) services are likely to provide a safe alternative to TDPRS obtaining conservatorship.

§700.703. Family Reunification Services.

The Texas Department of Protective and Regulatory Services' (TDPRS's) Child Protective Services (CPS) department provides reunification services to families whose children are returning home at the end of court-ordered placements in substitute care. It does not describe the services that CPS provides to families over the general course of a child's stay in substitute care, even though those services are usually directed towards family reunification. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home. There are three levels of reunification services - regular, intensive early, and intensive family-reunification services. Any of these services may be provided directly or through contracts.

(1) Regular reunification services.

(A) Definition. CPS provides reunification support services to families whose children are returning home at the end of court-ordered placements in substitute care. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home.

(B) Objectives. The objectives of regular reunification support services are to:

(i) ensure a smooth transition by helping the family and child prepare for and adjust to the child's return;

(ii) help the parents build on family strengths and resources in order to manage the risk of abuse or neglect; and

(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.

(C) Criteria. All of the criteria specified in clauses (i)-(iii) of this subparagraph must be satisfied before CPS provides reunification services:

(i) parents must have a reasonably stable living arrangement;

(ii) parents are working to complete goals listed on the family services plan; and

(iii) the child's transition home will occur within the next 30-60 days or is in process.

(2) Intensive early reunification services.

(A) Definition. Intensive early reunification services are provided to families when a child has been in substitute care no longer than 30 days. In many of these cases the children are returned home by the "14-Day Show Cause Hearing." Risk factors are high in these cases and intensive support services are needed.

(B) Objectives. The objectives of intensive early reunification services are to:

(i) provide immediate services that can help parents build on family strengths and resources in order to reduce the risk of abuse and neglect;

(ii) ensure the earliest possible safe return home of children who are have come into TDPRS conservatorship; and

(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.

(C) Criteria. All of the criteria specified in clauses (i)-(v) of this subparagraph must be satisfied before CPS provides intensive early reunification services:

(i) the family is willing and able to participate in the services;

(ii) the objective specified in subparagraph (B) of this paragraph must be achieved in 90 to 120 days;

(iii) at least one child was removed from the home;

(iv) a plan is in place to ensure the safety of the child; and

(v) intensive services are likely to improve the level of functioning of these families.

(3) Intensive family-reunification services.

(A) Definition. CPS provides intensive family-reunification services to families whose children have been placed in substitute care for a 30-day period of time or longer. Depending on the length of time a child has been in substitute care, the family may need various levels of support to rebuild the parent-child relationship. These families should be provided with a continuum of services through community agencies, CPS services, and extended family support. These resources should be used to assist the child and family through the reunification process.

(B) Objectives. The objectives of intensive family-reunification services are to:

(i) ensure a smooth transition by helping the family and child prepare for and adjust to the child's return;

(ii) help the parents build on family strengths and resources in order to reduce the risk of abuse or neglect; and

(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.

(C) Criteria. All of the criteria specified in clauses (i)-(v) of this subparagraph must be satisfied before CPS provides intensive reunification services:

(i) the situation is high risk and the permanency plan is family reunification;

(ii) the parents must have a reasonably stable living arrangement;

(iii) the parents are working to complete goals listed on the family services plan;

(iv) the child's transition home will occur within the next 30-60 days or is in process; and

(v) a plan is in place to ensure the safety of the child.

§700.704. Case Closure of Family Preservation or Reunification Cases.

(a) Case closure. The Texas Department of Protective and Regulatory Services' (TDPRS's) Child Protective Services (CPS) department closes family preservation or reunification cases in the two situations specified in paragraphs (1) and (2) of this subsection:

(1) CPS services no longer needed. The worker and supervisor close a family preservation case whenever the family:

(A) has reduced the risk to the child so that the child is safe from abuse and neglect and appears capable of managing the remaining risk without outside assistance; or

(B) appears capable of reducing the risk to the child with assistance from other sources than CPS, and is willing and able to rely on that assistance.

(2) Administrative closure. If it is determined that the child is at risk of abuse or neglect, the worker and supervisor may close the case in the situation specified in subparagraphs (A)-(C) of this paragraph:

(A) the family has moved and cannot be located;

(B) there is not enough evidence of a threat to the child's immediate and short-term safety for legal intervention; and

(C) either:

(i) the family refuses to accept further services; or

(ii) CPS has already offered or provided all the services that:

(I) are appropriate to the family's needs;

(II) CPS can provide or arrange; and

(III) the family has requested and is eligible to receive.

(b) Transfer from family preservation to substitute care.

(1) Whenever possible, CPS staff, together with the family, make the decision to remove the child from the home. CPS staff explore every reasonable alternative for keeping the child safe from abuse and neglect in the home. The child is removed only when there is no other reasonable way to protect the child from abuse or neglect in the immediate or short-term future.

(2) When family preservation or reunification services are provided and the family is still unable to protect a child from abuse or neglect in the immediate or short-term future, CPS staff initiate a court-ordered removal of the child from the home. Substitute care services are then provided to the child and family.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716298
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Chapter 720. Twenty-Four Hour Care Licensing

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§720.26 and 720.65, concerning fiscal accountability and adoption: allowable expenditures on behalf of birth parents; and proposes the repeal of §720.64, concerning audit and accounting standards for child-placing agencies providing adoption services, in its 24-Hour Care Licensing chapter. The purpose of the amendments and repeal is to implement changes in the licensing law passed in the 75th Legislative Session deleting annual audit requirements and adding new financial reporting requirements for adoption agencies. The amendments also simplify the previous requirements relating to allowable expenditures on behalf of birth parents by adoption agencies.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to facilitate and simplify adoption agencies' accounting for expenditures on behalf of birth parents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Joanna Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Joanna Taylor, Texas Department of Protective and Regulatory Services E-550, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Standards for Child-Placing Agencies

40 TAC §720.26, §720.65

The amendments are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendments implement the HRC, Chapters 40 and 42.

§720.26. Fiscal Accountability.

(a) General fiscal requirements. The child-placing agency must:

(1)-(2) (No change.)

(3) have a fee policy that clearly describes what fees are charged and what services are covered by the fees. For agencies providing adoption services, the fee policy must be approved by the Texas Department of Protective and Regulatory Services (TDPRS).

(b) Fiscal requirements for new agencies. New agencies must:

(1) set up a financial record keeping system to meet the requirements in subsection (c)(1)(B) of this section [~~approved by a certified public accountant (CPA) to meet generally accepted accounting standards (GAAS) as described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services)~~].

(2) submit a 12-month budget to TDPRS [~~the Texas Department of Protective and Regulatory Services (TDPRS)~~] when the signed application is submitted;

(3)-(4) (No change.)

(c) Fiscal requirements for agencies providing adoption services.

(1) General requirements. Agencies providing adoption services must:

(A) [~~(C)~~] ensure that annual income from adoption fees and any reimbursements related to adoption expenses, and gifts, donations, grants, or other sources of income related to adoption services does not exceed the agency's annual allowable and reasonable expenditures for providing adoption-related services to children, birth parents, adoptive applicants, and adoptive parents. The agency may carry over a maximum of three months adoption-related operating expenses as a reserve fund from fiscal year to fiscal year. Only allowable and reasonable expenditures may be included in such calculations.

[~~(A) have an annual audit by an independent CPA. The audit must be performed in accordance with generally accepted auditing standards (GAAS) as described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services). In lieu of an audit, agencies may submit a special report prepared by a CPA that meets the intent of the audit requirement.~~]

(B) submit an annual financial report to TDPRS on a form provided by the department. The report must include: [~~the following information to the TDPRS annually:~~]

(i) information on adoption related income from all sources. The report must include the source of the income (for example, adoption fees, any other fees charged, donations, etc.) and the amount; and [~~audit information pertaining to adoption fees and expenditures. The information must include an opinion letter from the CPA performing the audit verifying that the information submitted accurately reflects adoption related income and disbursements. Agencies submitting a special report in lieu of an audit must meet the intent of the standard in regard to the special report.~~]

(ii) adoption-related agency expenses. The report must include the expense category and the category detail. For example, the category "salaries" must be broken down by position. The category "birth parent expenses" must be broken down by type of expense, for example, housing, food, transportation, and any other expenses. [~~other financial information, as requested, required for the licensing review to determine that adoption related income and disbursements are reasonable, appropriate, and in compliance with minimum standards.~~]

(C) submit the financial report to TDPRS within 60 days of the end of the agencyþs fiscal year.

(D) not make any payments for adoption referrals.

(E) not accept any funds specific to the adoption of a particular child or fetus from an adoptive family prior to the completion and approval of an adoptive home study of the family.

(F) [~~(E)~~] have an adoption fee or adoption fee schedule equally applied to all clients.

(2) Pass through expenses. Agencies that pass through birth parent and other expenses to adoptive families must:

(A) include in the fee policy a complete description of the types of expenses that may be passed through to adoptive families.

(B) have available for review by TDPRS and provide to the adoptive family an individual report for each case where the agency passed through expenses to adoptive families. The report must be organized by expense category and include the date, amount, and a description of each expenditure.

(C) provide an estimate, in writing, to prospective adoptive families of the pass through expenses the agency anticipates will be associated with the specific adoption. This must be provided before the adoptive family makes any financial commitment to a specific placement.

(D) if the agency exceeds estimated expenses by more than 10%, obtain an acknowledgment and agreement to the additional expenses, in writing, from the adoptive family.

(E) inform the adoptive family, in writing, that a birth parent may choose not to relinquish a child for adoption and that the agency is prohibited from seeking repayment from that birth parent for expenses incurred in providing adoption services under the provisions of paragraph (3)(E) of this subsection.

(3) [~~(2)~~] Financial assistance to birth parents.

(A) An agency must not influence or attempt to influence birth parents to make a decision to relinquish their child by offering any form of financial or other material incentive.

(B) An agency must not make any payments to, or on behalf of, birth parents for goods or services that have already been paid for. An agency must not seek reimbursement for any expense not met by the agency.

(C) An agency may make allowable and reasonable expenditures on behalf of birth parents only when a demonstrated need for expenditures exist. Unless an agency can demonstrate that the basic health or safety of the birth parent or child is in imminent danger, the agency may not, by action or advice, disrupt an existing arrangement where needs are met and then make expenditures to meet those needs.

(D) Each adoption related expenditure must be documented by receipts. The receipt must include date, payee identification, purpose, and clear indication that funds were expended for services rendered or goods provided. [~~When making allowable and reasonable expenditures on behalf of birth parents, children, and adoptive parents, an agency providing adoption services must maintain financial records that clearly state the specifics of each transaction.~~]

[(i) An agency may provide cash payments to birth parents to cover costs of food, household supplies, personal hygiene and grooming products, and gasoline or public transportation. Each disbursement may cover a period of up to one month.]

[(ii) An agency may provide a cash payment(s) to birth parents for the purchase of necessary clothing.]

[(iii) An agency making allowable expenditures on behalf of birth parents must establish in its policies a maximum amount per category per time period based on such generally accepted criteria as the cost- of-living index.]

[(iv) Each transaction must be documented by receipts. Receipts must include date, payee identification, purpose, and clear indication that funds were expended for services rendered or goods provided. Canceled checks do not meet the documentation requirement.]

[(E) An agency providing adoption services may only make direct payments to a birth parent as permitted in subparagraph (D) of this paragraph.]

(E) [(F)] If the birth parent chooses not to relinquish a child for adoption, the agency must not require repayment from that birth parent for any services. This policy must be posted in the agency's offices and the agency must provide this information to birth parents in writing.

§720.65. Adoption: Allowable Expenditures on Behalf of Birth Parents.

[(a)] If any cost appears to be greater than the ordinary or usual costs in the community, the child-placing agency must show that the expenditure was fit and appropriate. The agency must demonstrate that all expenses are necessary and [,] that the birth parent(s) do not have resources to meet these needs. An agency may meet expenses after the birth of the child only for the period of time that the birth mother is incapacitated due to childbirth. Agencies must obtain an individual variance to meet any expenses for the birth parent beyond six weeks postpartum.

[(b) The agency may pay the following:]

[(1) reasonable costs for legal services related to the adoption.]

[(2) reasonable costs for medical services related to pregnancy, birth, and postnatal care for the birth mother and medical care for the child.]

[(3) reasonable costs for emergency health related services for the birth mother needed to protect the health and well-being of the fetus.]

[(4) reasonable costs for housing, including utilities and basic telephone service.]

[(5) reasonable costs for necessary transportation. The agency may pay for gas or public transportation related to necessary travel.]

[(6) reasonable costs for the purchase of food, necessary household supplies, and personal hygiene/grooming products.]

[(7) reasonable costs for clothing for the birth mother.]

[(8) reasonable costs for necessary mental health services for the birth mother during the pregnancy.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716283
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

40 TAC §720.64

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The repeal implements the HRC, Chapters 40 and 42.

§720.64. Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716284
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§720.29, 720.31, 720.120, 720.243, 720.305, 720.326, 720.425, 720.426, and 720.916, concerning children's rights, problem management, children's rights and privileges, children's rights and privileges in homes responsible to a child- placing agency, children's rights and privileges in an independent foster group home, personal restraint, and child care, in its 24-Hour Care Licensing chapter. The purpose of the amendments is to (1) require child care facilities, child-placing agencies, and foster parents in agency homes to inform children, at admission, about the facility's or home's policies and practices in the use of restraint; and (2) require child care facilities, child-placing agencies, and foster parents in agency homes to refrain from monitoring children's mail and telephone calls unless the need for such monitoring is specifically established in the child's service or treatment plan. If need is established, the amendments require review and re-evaluation of the need by professional staff monthly. The Preparation for Adult Living (PAL) Youth Leadership Committee recommended the development of these proposed rules.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications

for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that children's rights to privacy in mail and telephone calls are protected. Such protection fosters children's sense of self-esteem and self-worth and contributes to the development of responsible independence and autonomy. At the same time, the proposed amendments permit protection when there is a need established in the child's service or treatment plan. The sections will also ensure that children are aware of the facility's policies and practices in using restraint to manage problem behavior. This may help children in the management of their own behavior. It will also inform children about the limits placed by TDPRS rules and the facility's own policies on the use of restraint. This will enable children to better evaluate when a complaint about improper use of restraint is appropriate. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Joanna Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Joanna Taylor, Texas Department of Protective and Regulatory Services E-550, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Standards for Child-Placing Agencies

40 TAC §720.29, §720.31

The amendments are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendments implement the HRC, Chapters 40 and 42.

§720.29. Children's Rights.

(a)-(b) (No change.)

(c) Personal rights.

(1)-(7) (No change.)

(8) Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored unless the need for such restriction is determined by Level I child-placing staff. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the child's record. If restrictions continue longer than one month, Level I child-placing staff must re- evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record.

§720.31. Problem Management.

(a) (No change.)

(b) Restraint and seclusion.

(1)-(9) (No change.)

(10) At admission, the child-placing agency must explain to children able to comprehend the information, the agency's policies and practices on the use of restraint. The explanation must include who is permitted to do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the agency, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716277
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter B. Standards for Agency Homes

40 TAC §720.120

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§720.120. Children's Rights.

(a) (No change.)

(b) Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored by foster parents unless the need for such restriction is determined by the child-placing agency's Level I child-placing staff. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the child's record. If restrictions continue longer than one month, Level I child-placing staff must re-evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record. [~~Children shall not be denied their right to privacy in writing, sending, or receiving correspondence that would violate laws designed to ensure privacy and protect against obstruction of correspondence.~~]

(c)-(d) (No change.)

(e) Physical holding as a method of restraint shall be used only when necessary to protect the child from injury to self or others.

(1)-(2) (No change.)

(3) At admission, the foster parents must explain to children able to comprehend the information, the home's policies and practices on the use of restraint. The explanation must include who can do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the agency under which the home operates, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716278
C. Ed Davis

Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter E. Standards for Foster Family Homes

40 TAC §720.243

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§720.243. Children's Rights and Privileges.

(a) The foster family must [~~shall~~] allow privacy for each child. Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored by foster parents unless the need for such restriction is determined by a psychiatrist, licensed psychologist, or master's level social worker. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the child's record. If restrictions continue longer than one month, a psychiatrist, licensed psychologist, or master's level social worker must re-evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record.

(b)-(i) (No change.)

(j) Physical holding as a form of restraint shall be used only when necessary to protect the child from injury to self or others. The use of physical holding and the length of time used shall be recorded in the child's case record. Mechanical restraints shall not be used. At admission, the foster parents must explain to children able to comprehend the information, the home's policies and practices on the use of restraint. The explanation must include who can do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the home, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716279
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter F. Standards for Foster Group Homes

40 TAC §720.305, §720.326

The amendments are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendments implement the HRC, Chapters 40 and 42.

§720.305. Children's Rights and Privileges in Homes Responsible to a Child-Placing Agency.

(a)-(e) (No change.)

(f) Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored by the agency foster group home unless the need for such restriction is determined by the child-placing agency's Level I child-placing staff. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the childps record. If restrictions continue longer than one month, Level I child-placing staff must re-evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record.

(g) [~~(f)~~] Discipline shall be consistent with the policies of the child-placing agency. There shall be no cruel, harsh, unusual, or unnecessary punishment. A record shall be kept at the foster group home of the physical punishment administered to children and the imposition of restrictions to the foster group home that exceed 24 hours.

(1) Only foster parents or adult care givers may discipline a child.

(2) Children shall not be subjected to verbal remarks that belittle or ridicule them or their families.

(3) Children shall not be denied food, mail, or visits with their families as punishment.

(4) Children shall not be threatened with the loss of foster home placement as punishment.

(5) Discipline shall fit the needs of the child.

(6) No child of any age shall ever be shaken.

(7) If the policy of the child-placing agency permits spanking children less than five years old, spanking shall only be done with an open hand on the child's buttocks or hands.

(8) No form of discipline, control, or punishment shall be administered to children that violates state laws that protect children from abuse and neglect.

(h) [~~(g)~~] Physical holding as a form of restraint shall be used only to protect a child from injury to self or others. The use of physical holding and the length of time used shall be recorded in the child's case record. Mechanical restraint shall not be used.

(i) [~~(h)~~] Children shall not be placed in a locked room.

(j) At admission, the foster parents must explain to children able to comprehend the information, the home's policies and practices on the use of restraint. The explanation must include who can do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the agency under which the home operates, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

§720.326. Children's Rights and Privileges in an Independent Foster Group Home.

(a) The staff of the foster group home must [~~shall~~] allow privacy for each child. Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored by foster parents unless the need for such restriction is determined by a psychiatrist, licensed psychologist, or master's level social worker. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the child's record. If restrictions continue longer than one month, a psychiatrist, licensed psychologist, or masterþs level social worker must re-evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record.

(b)-(n) (No change.)

(o) At admission, the foster parents must explain to children able to comprehend the information, the home's policies and practices on the use of restraint. The explanation must include who can do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the home, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716280
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter H. Consolidated Standards for 24–Hour Care Facilities

40 TAC §720.425, §720.426

The amendments are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendments implement the HRC, Chapters 40 and 42.

§720.425. Personal Restraint.

(a)-(e) (No change.)

(f) At admission, the facility must explain to children able to comprehend the information, the facility's policies and practices on the use of restraint. The explanation must include who can do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the facility, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

§720.426. Child Care.

(a)-(l) (No change.)

(m) Staff must allow each child privacy. Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored by facility staff unless the need for such restriction is determined by a psychiatrist, licensed psychologist, or master's level social worker. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the child's record. If restrictions continue longer than one month, a psychiatrist, licensed psychologist, or master's level social worker must re-evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716281
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter M. Standards for Emergency Shelters

40 TAC §720.916

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§720.916. Children's Rights.

(a) The staff of the emergency shelter must allow privacy for each child. Children's mail (including electronic mail), incoming and outgoing, must not be opened or read and children's telephone calls, incoming and outgoing, must not be monitored by facility staff unless the need for such restriction is determined by a psychiatrist, licensed psychologist, or master's level social worker. Reasons for any restrictions on mail or telephone calls and the mail or calls so restricted must be documented in the child's record. If restrictions continue longer than one month, a psychiatrist, licensed psychologist, or master's level social worker must re-evaluate the restrictions at least monthly. Reasons for the continued restriction must be explained to the child and documented in the child's record.

(b)-(m) (No change.)

(n) At admission, the facility must explain to children able to comprehend the information, the facility's policies and practices on the use of restraint. The explanation must include who can do a restraint, the things caregivers must first try to do to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the facility, what a child needs to do to end the use of a restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

(o) [~~(n)~~] The emergency shelter may place children in a locked room only until they can be taken for immediate medical treatment. The emergency shelter must document in the child's record any seclusion of a child.

(p) [~~(o)~~] The emergency shelter must not allow children in care to act as or be employed as staff.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716282
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter A. Standards for Child-Placing Agencies

40 TAC §720.52

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §720.52, concerning birth parent participation, in its 24-Hour Care Licensing chapter. The purpose of the amendment is to require child-placing agencies to obtain a verified check of the paternity registry as part of exercising due diligence to locate an absent parent.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed section will be in effect there will be not be significant fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that the rights of birth fathers who register with the paternity registry and the validity of adoption actions are protected. There will be no effect on small businesses. However, there is an anticipated economic cost to child-placing agencies of $9.00 per registry search. The fee is to be collected by the Texas Department of Health.

Questions about the content of the proposal may be directed to Joanna Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Joanna Taylor, Texas Department of Protective and Regulatory Services E-550, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42, and the Family Code, §§102.009, 160.251, 160.255, 161.002, and 161.009.

§720.52. Birth Parent Preparation.

(a) (No change.)

(b) If an affidavit of status of child as provided by the Family Code states that the father of a child is unknown and no probable father is known, the child-placing agency must obtain a certificate from the Bureau of Vital Statistics signed by the registrar stating that a diligent search has been made of the paternity registry maintained by the Bureau and that a registration has not been found pertaining to the father of the child in question. This must be filed with the court before a trial on the merits in the suit for termination may be held.

(c) [~~(b)~~] Prior to establishing any formal relationship, the agency must provide written information to the birth parents regarding the following:

(1) alternatives and options to adoption for the birth parent and child;

(2) the services the agency provides, including counseling and post- adoption services;

(3) adoption registries;

(4) legal rights and responsibilities of the birth parents in regard to:

(A) relinquishment of parental rights;

(B) waivers of relinquishment;

(C) affidavit of status;

(D) termination of parental rights; [~~and~~]

(E) designating the father of a child as "unknown;[~~,~~]" and

(F) paternity registry requirements;

(5) any assistance available through the agency to meet housing, medical and prenatal care and other needs.

(d) [~~(c)~~] Birth parents must not be pressured to make a decision about placing their child.

(e) [~~(d)~~] An affidavit for voluntary relinquishment of parental rights must not be signed by the birth parent until 48 hours after the birth of the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716276
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438-3765

♦ ♦ ♦

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§720.137, 720.207, 720.363, 720.367, 720.370, 720.374, 720.511, 720.533, and 720.534, concerning child care, development, and training standards for therapeutic agency homes; child care, development, and training standards for therapeutic family homes; child care, development, and training standards for habilitative group homes responsible to a child placing agency; child care, development, and training standards for therapeutic group homes responsible to a child placing agency; child care, development, and training standards for independent habilitative group homes; child care, development, and training standards for independent therapeutic group homes; mechanical restraint–institutions serving mentally retarded children; mechanical restraint–residential treatment centers; and seclusion–residential treatment centers, in its 24-Hour Care Licensing chapter. The purpose of the amendments is to make it clear that the use of mechanical restraint is permitted only in institutions serving mentally retarded children, residential treatment centers, and foster family and foster group homes meeting the requirements to serve children with autistic-like behavior and

the use of seclusion is only permitted in residential treatment centers. The amendments also clarify that, when mechanical restraint and seclusion are permitted, authorization from the physician, psychiatrist, or psychologist (as specified for the type of facility) must be obtained for use of the intervention with the individual child prior to use of mechanical restraint or seclusion. The authorization must also include the specific circumstances under which the intervention can be used.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to protect the health, safety, and well-being of children in residential child care from unauthorized use of mechanical restraint or seclusion. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Joanna Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Joanna Taylor, Texas Department of Protective and Regulatory Services E-550, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter C. Standards for Habilitative and Therapeutic Agency Homes

40 TAC §720.137

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§720.137. Child Care, Development, and Training Standards for Therapeutic Agency Homes.

(a)-(b) (No change.)

(c) Residents' Rights.

(1) (No change.)

(2) Physical holding for restraint can be used only in an emergency and when necessary to protect the resident from injury to self or others. When physical restraint is used, the circumstances, including the length of time the restraint was used, must be documented in the resident's record. The use of mechanical restraint or seclusion is prohibited.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716272
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter D. Standards for Habilitative and Therapeutic Family Homes

40 TAC §720.207

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§720.207. Child Care, Development, and Training Standards for Therapeutic Family Homes.

(a)-(b) (No change.)

(c) Residents' Rights.

(1) (No change.)

(2) Physical restraint can be used only in an emergency and when necessary to protect the resident from injury to self or others. When physical restraint is used, the circumstances, including the length of time the restraint was used, must be documented in the resident's record. The use of mechanical restraint or seclusion is prohibited.

(3) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716273
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter G. Standards for Habilitative and Therapeutic Group Homes Responsible to a Child-Placing Agency and for Independent Habilitative and Therapeutic Group Homes

40 TAC §§720.363, 720.367, 720.370, 720.374

The amendments are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendments implement the HRC, Chapters 40 and 42.

§720.363. Child Care, Development, and Training Standards for Habilitative Group Homes Responsible to a Child Placing Agency.

(a)-(c) (No change.)

(d) Children's Rights.

(1) (No change.)

(2) If the agency's policies permit the use of restraint, this must be limited to emergency use of personal restraint. [~~Physical~~

holding for restraint or mechanical restraints must be used only when necessary to protect the child from injury to self or others.]

(A) Restraining measures must not be used as punishment, as a substitute for effective treatment or program, or for the caregiver's convenience.

(B) If restraining measures are used, only such force as is reasonable and necessary may be used.

(C) If the agency authorizes the use of restraint for a child, caregivers must be trained in the type of restraint authorized before the child is placed.

(D) Personal restraint may be used only when a child's behavior endangers himself or others.

(E) The child must be released from personal restraint as soon as he is no longer a danger to himself or others.

(F) Any use of personal restraint must be documented in the child's record, including:

(i) the date and time the caregiver began using the restraint and the name of the caregiver using it;

(ii) a description of the specific behaviors necessitating the use of the restraint;

(iii) the type of restraint used and the length of time the child was restrained; and

(iv) any injury the child sustained as a result of the incident or the use of restraint.

(G) The use of personal restraint must be evaluated as part of the next service plan review. The agency must consider alternative strategies to handle the behavior that required using personal restraint. This evaluation and instructions to caregivers concerning alternative strategies must be documented in the child's record.

(H) Except as permitted in Chapter 720, Subchapter S of this title (relating to Standards for Child Care Facilities Serving Children with Autistic-like Behavior), mechanical restraints, seclusion, or placing a child in a locked room must not be used in an agency home. Protective devices may only be used when prescribed by a physician.

[(A) In an emergency, only physical holding can be used unless a physician orders mechanical restraint. The nature of the emergency shall be documented.]

[(B) The need for restraint, the type of restraint used, and the length of time the restraint was used must be recorded in the child's record.]

[(C) If physical holding for restraint is to be used other than in an emergency, it can be used only upon the orders of a licensed physician.]

[(D) Any order for restraint must designate the type or restraint, the circumstances, and the duration of its use.]

(e) (No change.)

§720.367. Child Care, Development, and Training Standards for Therapeutic Group Homes Responsible to a Child-Placing Agency.

(a)-(b) (No change.)

(c) Residents' Rights.

(1) (No change.)

(2) If the agency's policies permit the use of restraint, this must be limited to emergency use of personal restraint. [Physical restraints can be used only in an emergency when necessary to protect the resident from injury to self or others. When physical restraint is used, the circumstances, including the length of time the restraint was used, must be documented in the resident's record.]

(A) Restraining measures must not be used as punishment, as a substitute for effective treatment or program, or for the caregiver's convenience.

(B) If restraining measures are used, only such force as is reasonable and necessary may be used.

(C) If the agency authorizes the use of restraint for a child, caregivers must be trained in the type of restraint authorized before the child is placed.

(D) Personal restraint may be used only when a child's behavior endangers himself or others.

(E) The child must be released from personal restraint as soon as he is no longer a danger to himself or others.

(F) Any use of personal restraint must be documented in the child's record, including:

(i) the date and time the caregiver began using the restraint and the name of the caregiver using it;

(ii) a description of the specific behaviors necessitating the use of the restraint;

(iii) the type of restraint used and the length of time the child was restrained; and

(iv) any injury the child sustained as a result of the incident or the use of restraint.

(G) The use of personal restraint must be evaluated as part of the next service plan review. The agency must consider alternative strategies to handle the behavior that required using personal restraint. This evaluation and instructions to caregivers concerning alternative strategies must be documented in the child's record.

(H) Except as permitted in Chapter 720, Subchapter S, of this title (relating to Standards for Child Care Facilities Serving Children with Autistic-like Behavior), mechanical restraints, seclusion, or placing a child in a locked room must not be used in an agency home. Protective devices may only be used when prescribed by a physician.

[(3) A resident must not be placed alone in a locked room.]

(d) (No change.)

§720.370. Child Care, Development, and Training Standards for Independent Habilitative Group Homes.

(a)-(c) (No change.)

(d) Children's Rights.

(1) (No change.)

(2) If the facility's policies permit the use of restraint, this must be limited to emergency use of personal restraint.

(A) Restraining measures must not be used as punishment, as a substitute for effective treatment or program, or for the caregiver's convenience.

(B) If restraining measures are used, only such force as is reasonable and necessary may be used.

(C) Personal restraint may be used only when a child's behavior endangers himself or others.

(D) The child must be released from personal restraint as soon as he is no longer a danger to himself or others.

(E) Any use of personal restraint must be documented in the child's record, including:

(i) the date and time the caregiver began using the restraint and the name of the caregiver using it;

(ii) a description of the specific behaviors necessitating the use of the restraint;

(iii) the type of restraint used and the length of time the child was restrained; and

(iv) any injury the child sustained as a result of the incident or the use of restraint.

(F) The use of personal restraint must be evaluated as part of the next service plan review. The facility must consider alternative strategies to handle the behavior that required using personal restraint. This evaluation and instructions to caregivers concerning alternative strategies must be documented in the child's record.

(G) Except as permitted in Chapter 720, Subchapter S of this title, (relating to Standards for Child Care Facilities Serving Children with Autistic-like Behavior), mechanical restraints, seclusion, or placing a child in a locked room must not be used in a foster group home. Protective devices may only be used when prescribed by a physician.

[~~(2) Physical holding for restraint or mechanical restraints must be used only when necessary to protect the child from injury to self or others.~~]

[~~(A) In an emergency, only physical holding can be used unless a physician orders mechanical restraint. The nature of the emergency shall be documented.~~]

[~~(B) The need for restraint, the type of restraint used, and the length of time the restraint was used must be recorded in the child's record.~~]

[~~(C) If physical restraint is to be used other than in an emergency, it can be used only upon the orders of a licensed physician.~~]

[~~(D) Any order for restraint must designate the type of restraint, the circumstances, and the duration of its use.~~]

(e) (No change.)

§720.374. Child Care, Development, and Training Standards for Independent Therapeutic Group Homes.

(a)-(b) (No change.)

(c) Residents' Rights.

(1) (No change.)

(2) If the facility's policies permit the use of restraint, this must be limited to emergency use of personal restraint. [~~Physical restraint can be used only in an emergency and when necessary to protect the resident from injury to self or others. When physical restraint is used, the circumstances, including the length of time the restraint was used, must be documented in the resident's record.~~]

(A) Restraining measures must not be used as punishment, as a substitute for effective treatment or program, or for the caregiver's convenience.

(B) If restraining measures are used, only such force as is reasonable and necessary may be used.

(C) Personal restraint may be used only when a child's behavior endangers himself or others.

(D) The child must be released from personal restraint as soon as he is no longer a danger to himself or others.

(E) Any use of personal restraint must be documented in the child's record, including:

(i) the date and time the caregiver began using the restraint and the name of the caregiver using it;

(ii) a description of the specific behaviors necessitating the use of the restraint;

(iii) the type of restraint used and the length of time the child was restrained; and

(iv) any injury the child sustained as a result of the incident or the use of restraint.

(F) The use of personal restraint must be evaluated as part of the next service plan review. The facility must consider alternative strategies to handle the behavior that required using personal restraint. This evaluation and instructions to caregivers concerning alternative strategies must be documented in the child's record.

(G) Except as permitted in Chapter 720, Subchapter S of this title, (relating to Standards for Child Care Facilities Serving Children with Autistic-like Behavior), mechanical restraints, seclusion, or placing a child in a locked room must not be used in a foster group home. Protective devices may only be used when prescribed by a physician.

[~~(3) A resident must not be placed alone in a locked room.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716274
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter H. Consolidated Standards for 24–Hour Care Facilities

40 TAC §§720.511, 720.533, 720.534

The amendments are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendments implement the HRC, Chapters 40 and 42.

§720.511. Mechanical Restraint–Institutions Serving Mentally Retarded Children.

(a) Mechanical restraint may only be used to prevent a child from injuring himself or others. A licensed physician or psychologist must authorize, in writing, the use of mechanical restraint for a child before mechanical restraint may be used. The written authorization must be signed by the physician or psychologist. In an emergency, a licensed physician or psychologist may give verbal authorization for use of mechanical restraint. The emergency verbal authorization must be obtained before mechanical restraint is used. When emergency verbal authorization is obtained, the physician or psychologist must provide written authorization within 24 hours of giving the verbal order. Verbal authorization must meet all requirements for written authorization specified in subsection (b) of this section. [~~Mechanical restraint may be used only with a licensed physician's or licensed psychologist's signed written authorization to prevent the child from injuring himself or others. Verbal authorization must be noted. The physician or psychologist must review and sign the verbal authorization within 24 hours.~~]

(b)-(f) (No change.)

§720.533. Mechanical Restraint–Residential Treatment Centers.

(a) Mechanical restraint may only be used to prevent a child from injuring himself or others. A psychiatrist or licensed psychologist must authorize, in writing, the use of mechanical restraint for a child before mechanical restraint may be used. The written authorization must be signed by the psychiatrist or psychologist. In an emergency, a psychiatrist or licensed psychologist may give verbal authorization for use of mechanical restraint. The emergency verbal authorization must be obtained before mechanical restraint is used. When emergency verbal authorization is obtained, the psychiatrist or psychologist must provide written authorization within 24 hours of giving the verbal order. Verbal authorization must meet all requirements for written authorization specified in subsection (b) of this section. [~~Mechanical restraint may be used only with a psychiatrist's or licensed psychologist's signed written authorization to prevent the child from injuring himself or others. Verbal authorization must be noted. The psychiatrist or psychologist must review and sign the verbal authorization within 24 hours.~~]

(b)-(f) (No change.)

§720.534. Seclusion–Residential Treatment Centers.

(a) (No change.)

(b) A psychiatrist or licensed psychologist must authorize, in writing, the use of seclusion for a child before seclusion may be used. The written authorization must be signed by the psychiatrist or psychologist. In an emergency, a psychiatrist or licensed psychologist may give verbal authorization for use of seclusion. The emergency verbal authorization must be obtained before seclusion is used. When emergency verbal authorization is obtained, the psychiatrist or psychologist must provide written authorization within 24 hours of giving the verbal order. Verbal authorization must meet all requirements for written authorization specified in subsection (c) of this section. [~~Seclusion may be used only with a psychiatrist's or licensed psychologist's signed written authorization. Verbal authorization must be noted. The psychiatrist or psychologist must review and sign the verbal authorization within 24 hours.~~]

(c)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716275

C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Chapter 725. General Licensing Procedures

Subchapter P. Alternative Accreditation

40 TAC §§725.1501-725.1508, 725.1515-725.1520

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §§725.1501-725.1508 and 725.1515-725.1520, concerning the newly legislated alternative accreditation program which allows a child-care facility or child-placing agency to operate without a state license if the facility or agency is accredited by an accreditation organization that is approved by TDPRS. The purpose of the proposal is to create an alternative accreditation program as required by the 75th Legislature. The approved accreditation organizations must publish, promulgate, and require compliance with standards and inspection procedures which meet or exceed the state's minimum requirements for child-care facilities and child-placing agencies. The new sections are proposed in new Subchapter P, Alternative Accreditation.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be minimal fiscal implications for state government and no impact for local government as a result of enforcing or administering the sections, other than those required by the underlying legislation.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that child-care facilities and child-placing agencies who choose to participate in the alternative accreditation program will pay less to TDPRS in fees than they are required to pay under licensing. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the proposed sections is an initial fee of $20 for facilities and agencies to request approval to operate under accreditation. Accreditation organizations will be charged an initial fee of $35 to request approval from TDPRS.

Questions about the content of the proposal may be directed to Sasha Wozniak Rasco at (512) 438-3249 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-086, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The new sections implement the HRC, Chapter 42, Subchapter E, §§42.101-42.111. These sections provide for the procedures for approval of an accreditation organization and renewal of that approval, as well as the certification of facilities and agencies to operate under accreditation, emergency suspension of such facilities and agencies, and withdrawal or revocation of such

facilities and agencies, as well as inspections of such facilities and agencies under limited circumstances.

§725.1501. Alternative Accreditation Program.

A child-care facility or child-placing agency otherwise required to obtain a license under the Human Resources Code, Title 2, Chapter 42, Subchapter C, may operate the facility or agency without a license if the facility or agency is accredited by an accreditation organization approved by the Texas Department of Protective and Regulatory Services under the Human Resources Code, Title 2, Chapter 42, Subchapter E, and under this subchapter.

§725.1502. Accreditation Organization.

To qualify for approval by the Texas Department of Protective and Regulatory Services (TDPRS) under §725.1501 of this title (relating to the Alternative Accreditation Program) and under §725.1527 of this title (relating to Alternative Accreditation of Child-Care Administrators), an accreditation organization must:

(1) be a recognized private organization that has experience in the child-care and/or child-placing industry, have a credible background in accreditation, and have at least one staff member with a level of expertise similar to that required for child-care administrator's license;

(2) promulgate, publish, and require compliance with standards and inspection procedures for child-care facilities or child-placing agencies that meet or exceed the state's minimum requirements for child-care facilities or child-placing agencies under the Human Resources Code, Title 2, Chapter 42, Subchapter C, with the exception of standards relating to the internal self-governance of a facility or agency and to the curriculum, teaching, or instruction of the facility or agency;

(3) if planning to accredit child-care administrators under §725.1527 of this title, require accredited child-care administrators to meet qualifications that meet or exceed the state's qualifications for a child-care administrator under §43.004 of the Human Resources Code, with the exception of those qualifications relating to the internal self-governance of the child-care institution and to the curriculum, teaching, or instruction of the institution, but including the state's requirements for continuing education required under §43.009(a) of the Human Resources Code;

(4) not have any person serve as a member of the governing body of the accreditation organization who has control over the operation of or financial interest in a child-care facility or child-placing agency that is accredited by the accreditation organization;

(5) demonstrate a strong commitment to ensuring the provision of high- quality child-care services through its standards and inspection procedures, and through a policy of communicating with parents or guardians that meets or exceeds TDPRS's policy of communication with parents or guardians, including sharing the compliance history of the facility or agency with parents or guardians, requiring the facility or agency to post its certificate or letter of accreditation, and sharing any non-compliances related to violation of health and safety standards with parents or guardians; and

(6) show evidence of adequate financial resources necessary to comply with paragraphs (1)-(3) and (5) of this section.

§725.1503. Request for Approval of Accreditation Organization.

An organization may apply to accredit both child-care facilities and child-placing agencies, and child-care administrators in one application for one fee. To request approval by the Texas Department of Protective and Regulatory Services (TDPRS), an accreditation organization must:

(1) complete and submit TDPRS's request form;

(2) submit a copy of the organization's minimum standards for child- care facilities and child-placing agencies;

(3) if planning to accredit child-care administrators under §725.1527 of this title (relating to the Alternative Accreditation of Child-Care Administrators), submit a copy of the organization's minimum qualifications for a child-care administrator;

(4) submit a copy of the organization's inspection procedures for child-care facilities and child-placing agencies, including, but not limited to the frequency and scope of the announced and unannounced inspections and the minimum qualifications of staff performing and evaluating the inspections; and

(5) submit a fee of $35 to compensate TDPRS for the administrative cost of processing the request for approval.

§725.1504. Approval of Accreditation Organization.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) shall approve an accreditation organization if it meets the requirements of Human Resources Code Chapter 42, Subchapter E; §725.1502 of this title (relating to Accreditation Organization); and §725.1503 of this title (relating to Request for Approval of Accreditation Organization).

(b) TDPRS shall provide the accreditation organization with a letter of approval which indicates the facility and agency types that the accreditation organization is approved to accredit and whether the organization is approved to accredit child-care administrators under §725.1527 of this title (relating to Alternative Accreditation of Child-Care Administrators).

(c) An approval granted by TDPRS is valid only for the facility and agency types indicated in the letter of approval.

(d) An approval granted by TDPRS under this section is valid for one year.

§725.1505. Ongoing Obligations of Approved Accreditation Organization.

To comply with the laws and rules governing the Alternative Accreditation Program, and if applicable, the Alternative Accreditation of Child-Care Administrators, the accrediting organization must:

(1) furnish the Texas Department of Protective and Regulatory Services (TDPRS) with the written accreditation report and certificate or letter of accreditation of a facility or agency registering to operate under accreditation and must validate that information to TDPRS upon request;

(2) if accrediting child-care administrators, furnish a copy each child-care administrator's certificate or letter of accreditation;

(3) furnish TDPRS with the results of the background and criminal history checks on:

(A) a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code;

(B) a person who registers with TDPRS to operate under accreditation or holds a certificate to operate under accreditation issued by TDPRS;

(C) an operator of a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation; and

(D) an employee of or an applicant for employment by a child-care facility or child-placing agency accredited by the or-

ganization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation;

(4) file the most recent inspection report for each facility and/or agency accredited by the organization 30 days before the date of TDPRS's renewal of the approval of the accreditation organization, in order to assist TDPRS in determining whether the accreditation organization is requiring compliance with standards and inspection procedures which meet or exceed the state's minimum requirements for child-care facilities or child-placing agencies;

(5) file with TDPRS any complaints that, despite the efforts made by the accreditation organization, the facility or agency has violated the standards of the accreditation organization and the violation creates an immediate threat to the health or safety of children attending or residing in the facility or agency; and

(6) notify TDPRS of the revocation or withdrawal of the accreditation of a child-care facility or child-placing agency holding a certificate to operate under accreditation, or the revocation or withdrawal of the accreditation of a child-care administrator. The organization must notify TDPRS no later than the seventh day after the date on which the organization revokes or withdraws the accreditation.

§725.1506. Background and Criminal History Checks.

(a) An approved accreditation organization shall obtain and review the background information from the Texas Department of Protective and Regulatory Services' (TDPRS's) central registry of reported cases of abuse or neglect established under §261.002 of the Family Code and information from the Department of Public Safety established under §411.114 of the Government Code in order to review the general character and fitness of:

(1) a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code;

(2) a person who registers with TDPRS to operate under accreditation or holds a certificate to operate under accreditation issued by TDPRS;

(3) an operator of a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation; and

(4) an employee of or an applicant for employment by a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation.

(b) An approved accreditation organization shall not accredit a child- care administrator if the results of the background or criminal history check conducted by the organization show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a confirmed history of abuse or neglect.

(c) TDPRS shall revoke the organization's accreditation of a child- care administrator if the results of the background or criminal history check show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a confirmed history of abuse or neglect, and the organization fails to deny, revoke, or withdraw the accreditation of the child-care administrator.

§725.1507. Remedies for Denial or Revocation of Approval of Accreditation Organization.

The Texas Department of Protective and Regulatory Services shall use the remedies specified in Subchapter D of Chapter 42 of the Human Resources Code to address exigent situations in which an approved accreditation organization does not timely correct an action that endangers the health and safety of children, including furnishing copies of complaints that, despite the efforts made by the accreditation organization, the facility or agency has violated the standards of the accreditation organization and the violation creates an immediate threat to the health or safety of children attending or residing in the facility or agency.

§725.1508. Renewal of Approval of Accreditation Organization.

(a) Once every year, the Texas Department of Protective and Regulatory Services (TDPRS) will review the accreditation organization's compliance with laws and rules governing the Alternative Accreditation Program, and if applicable, the Alternative Accreditation of Child- Care Administrators.

(b) If the accreditation organization has maintained compliance with the laws and rules governing the Alternative Accreditation Program, and if applicable, the Alternative Accreditation of Child-Care Administrators, TDPRS will renew the accreditation organization's approval.

(c) A renewed approval of an accreditation organization is valid for one year.

§725.1515. Registration to Operate Under Accreditation.

(a) A child-care facility or child-placing agency that is accredited by an approved accreditation organization may register with the Texas Department of Protective and Regulatory Services (TDPRS) by submitting:

(1) a completed registration form prescribed by TDPRS;

(2) a copy of the certificate, license, or award letter of accreditation from the approved accreditation organization stating the accreditation status of the facility or agency;

(3) a copy of the accreditation organization's written accreditation report of the facility or agency, which includes information necessary for TDPRS to ascertain whether the accrediting organization is requiring compliance with standards and inspection procedures which meet or exceed the state's minimum requirements for child-care facilities or child-placing agencies; and

(4) a fee of $20 plus $2 for any background check required under §42.105 of the Human Resources Code and conducted by TDPRS.

(b) TDPRS shall process and act on a registration not later than the 30th day after the date on which TDPRS receives all of the required information and fees.

§725.1516. Certificate to Operate Under Accreditation.

(a) Except as provided by §725.1519 of this title (relating to the Denial or Revocation of the Certificate), the Texas Department of Protective and Regulatory Services (TDPRS) shall issue a certificate to operate under accreditation to a child-care facility or child- placing agency if the:

(1) facility or agency submits all of the information required by §725.1515 of this title (relating to the Registration to Operate Under Accreditation);

(2) facility or agency remits the $20 administrative fee for the registration and the $2 fee for any background check required under §42.105 of the Human Resources Code and conducted by TDPRS; and

(3) accreditation organization confirms that the facility or agency is accredited and in good standing with its organization.

(b) A certificate to operate under accreditation is valid for one year after the date of issuance.

(c) The facility or agency shall make the certificate available for examination.

(d) The certificate is not transferable and applies only to the operator and location named in the certificate.

(e) A child-care facility's or child-placing agency's certificate to operate under accreditation becomes invalid immediately upon the revocation or withdrawal of accreditation by the accreditation organization.

(f) A child-care facility or child-placing agency may not operate without a valid certificate to operate under accreditation, unless the facility or agency has been issued a valid license or provisional license under §42.041 of the Human Resources Code.

§725.1517. Authority to Conduct Limited Inspections.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) shall inspect a child-care facility or child-placing agency holding a certificate to operate under accreditation if:

(1) TDPRS has received a complaint or report of child abuse or neglect alleged to have occurred at the facility or agency; or

(2) TDPRS has received a complaint that, despite the efforts made by an approved accreditation organization, the facility or agency has violated the standards of the accreditation organization and the violation creates an immediate threat to the health or safety of children attending or residing in the facility or agency.

(b) Based on the results of an inspection conducted under subsection (a) of this section, TDPRS may:

(1) require the facility or agency to take appropriate corrective action to eliminate any violations of the standards of the accreditation organization or require such other action determined necessary to ensure the health and safety of the children attending or residing in the facility or agency; and

(2) continue to inspect the facility or agency until the corrective action has been taken and for such reasonable time after corrective action to ensure continued compliance with standards.

§725.1518. Emergency Suspension of a Child-Care Facility or Child-Placing Agency.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) shall suspend a certificate of a child-care facility or child-placing agency to operate under accreditation and, if appropriate, place the children attending or residing in the facility or agency elsewhere if:

(1) TDPRS finds the facility or agency is operating in violation of the standards of its accreditation organization; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility or agency.

(b) An order suspending the certificate to operate under accreditation of a child-care facility or child-placing agency is immediately effective on the date on which the certificate holder receives written notice or on a later date specified in the order.

(c) An order is valid for ten days after the effective date of the order.

(d) The suspension of a certificate and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

§725.1519. Denial or Revocation of the Certificate.

(a) A registration or certificate to operate under accreditation may be denied, revoked, or not renewed based on the results of a background or criminal history check.

(b) The Texas Department of Protective and Regulatory Services (TDPRS) shall deny a registration or renewal of a certificate to operate under accreditation if the results of the background or criminal history check conducted by TDPRS show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a confirmed history of abuse or neglect.

(c) TDPRS shall revoke a certificate to operate under accreditation if the results of the background or criminal history check conducted by TDPRS show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a confirmed history of abuse or neglect, and the facility or agency fails to remove that person from the facility or agency.

§725.1520. Renewal of the Certificate.

Except as provided by §725.1519 of this title (relating to the Denial or Revocation of the Certificate), the Texas Department of Protective and Regulatory Services shall renew the certificate to operate under accreditation if the accreditation organization verifies that the facility or agency has maintained its accreditation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716346
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438-3765

♦ ♦ ♦

40 TAC §§725.1527-725.1533

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §§725.1527-725.1533, concerning the newly legislated alternative accreditation program which allows a child-care administrator to operate without a license if the administrator is accredited by an approved accreditation organization that has minimum qualifications for the administrator that meet or exceed the state's qualifications for a child-care administrator and the administrator is working in an accredited child-care institution.

The purpose of the proposal is to create an alternative accreditation program as required by the 75th Legislature. The new sections are proposed in new Subchapter P, Alternative Accreditation.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be minimal fiscal implications for state government and no impact for local government as a result of enforcing or administering the sections, other than those required by underlying legislation.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that administrators who choose to participate in the alternative accreditation program

will pay no fees to TDPRS, while they are required to pay an annual $50 fee under licensing. There will be no effect on small businesses. Accreditation organizations will be charged an initial fee of $35 to request approval from TDPRS.

Questions about the content of the proposal may be directed to Sasha Wozniak Rasco at (512) 438-3249 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-086, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The new sections implement the HRC, Chapter 43, §43.003(c). This section provides for the procedures for approval of an accreditation organization exclusively for child-care administrators and renewal of that approval.

§725.1527. Alternative Accreditation of Child-Care Administrators.

A person may serve as a child-care administrator of an accredited child-care institution without a license if the person is accredited by an accreditation organization approved by the Texas Department of Protective and Regulatory Services under §725.1504 of this title (relating to the Approval of Accreditation Organization) or §725.1530 of this title (relating to the Approval of Accreditation Organization for Child-Care Administrators). A child-care administrator accredited under this section may only operate in a child-care institution that holds a certificate to operate under accreditation, unless the child-care administrator is issued a license under Chapter 43 of the Human Resources Code.

§725.1528. Accreditation Organization for Child-Care Administrators.

To qualify for approval by the Texas Department of Protective and Regulatory Services under §43.003(c) of the Human Resources Code and §725.1527 of this title (relating to the Accreditation of Child-Care Administrators), an accreditation organization must:

(1) be a recognized private organization that has experience in the child-care and/or child-placing industry, have a credible background in accreditation, and have at least one staff member with a level of expertise similar to that required for a child-care administrator's license;

(2) require accredited child-care administrators to meet qualifications that meet or exceed the state's qualifications for a child-care administrator under §43.004 of the Human Resources Code, with the exception of those qualifications relating to the internal self-governance of the child-care institution and to the curriculum, teaching, or instruction of the institution, but including the state's requirements for continuing education required under §43.009(a) of the Human Resources Code;

(3) not have any person serve as a member of the governing body of the accreditation organization who has control over the operation of or financial interest in a child-care facility or child-placing agency that is accredited by the accreditation organization;

(4) demonstrate a strong commitment to ensuring the provision of high- quality child-care services; and

(5) show evidence of adequate financial resources necessary to comply with paragraphs (1), (2), and (4) of this section.

§725.1529. Request for Approval of Accreditation Organization for Child-Care Administrators.

To request approval to accredit child- care administrators, an accreditation organization must:

(1) complete and submit the Texas Department of Protective and Regulatory Services' (TDPRS's) request form;

(2) submit a copy of the organization's minimum qualifications for child-care administrators; and

(3) submit a fee of $35 to compensate TDPRS for the administrative cost of processing the request for approval.

§725.1530. Approval of Accreditation Organization for Child- Care Administrators.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) shall approve an accreditation organization to accredit child-care administrators if it meets the requirements of the Human Resources Code, §43.003(c); §725.1528 of this title (relating to Accreditation Organization for Child-Care Administrators); and §725.1529 of this title (relating to Request for Approval of Accreditation Organization for Child-Care Administrators).

(b) TDPRS shall provide the accreditation organization with a letter of approval which indicates that the organization is approved to accredit child-care administrators.

(c) An approval granted by TDPRS under this section applies only to the accreditation of child-care administrators.

(d) An approval granted by TDPRS under this section is valid for one year.

§725.1531. Ongoing Obligations of Approved Accreditation Organization for Child-Care Administrators.

In order to comply with the laws and rules governing the Alternative Accreditation of Child-Care Administrators, the accrediting organization must:

(1) furnish the Texas Department of Protective and Regulatory Services (TDPRS) with the certificate or letter of accreditation of a child- care administrator;

(2) furnish TDPRS with the results of the background and criminal history checks on a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code; and

(3) notify TDPRS of the revocation or withdrawal of the accreditation of a child-care administrator. The organization must notify TDPRS not later than the seventh day after the date on which the organization revokes or withdraws the accreditation.

§725.1532. Background and Criminal History Checks for Accredited Child-Care Administrators.

(a) An approved accreditation organization shall obtain and review background information from the Texas Department of Protective and Regulatory Services' (TDPRS's) central registry of reported cases of abuse or neglect established under §261.002 of the Family Code and information from the Department of Public Safety established under §411.114 of the Government Code in order to review the general character and fitness of a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code.

(b) An approved accreditation organization shall not accredit a child- care administrator if the results of the background or criminal history check conducted by the organization show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a confirmed history of abuse or neglect.

(c) TDPRS shall revoke the organization's accreditation of a child- care administrator if the results of the background or criminal history check show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a confirmed history of abuse or neglect, and the organization fails to deny, revoke, or withdraw the accreditation of the child-care administrator.

§725.1533. Renewal of Approval of Accreditation Organization.

(a) Once every year, the Texas Department of Protective and Regulatory Services (TDPRS) will review the accreditation organization's compliance with laws and rules governing the Alternative Accreditation of Child-Care Administrators.

(b) If the accreditation organization has maintained compliance with the laws and rules governing the Alternative Accreditation of Child- Care Administrators, TDPRS will renew the accreditation organization's approval.

(c) A renewed approval granted by TDPRS under this section applies only to the accreditation of child-care administrators.

(d) A renewed approval of an accreditation organization is valid for one year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716345
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438-3765

♦ ♦ ♦

Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.1801, 725.2027, and 725.4051, concerning criminal history and central registry background checks, opportunity to show rehabilitation, and release and use of confidential information under necessary circumstances, in its General Licensing Procedures chapter. The purpose of the amendments is to set a specific fee of $2.00 for conducting a background and criminal history check. The setting of a fee was required by the 75th Legislature in Senate Bill 359, §42.057(c). TDPRS was further required to set the amount at a level not to exceed the administrative costs TDPRS incurs in conducting the background and criminal history checks. These proposed rules set specific guidelines for the denial or revocation of a license, certificate, registration, or listing based on criminal or abuse/neglect background. Also, guidelines are established for release of information about a specific penal code offense or abuse/neglect central registry match to the employer or other necessary entities.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased protection for children in out-of-home care. Persons with a criminal or abuse/neglect background will be identified and the information released to employers and the public when necessary to safeguard children. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the proposed sections is an additional cost of $2.00 per new child care employee and biennially thereafter for fiscal year 1998; $2.00 per tenured child care employee and biennially thereafter for fiscal year 1999; $2.00 as needed per child care employee for fiscal year 2000; $2.00 as needed per child care employee for fiscal year 2001; and $2.00 as needed per child care employee for fiscal year 2002.

Questions about the content of the proposal may be directed to Mary E. Panella at (512) 438-3246 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-065, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter S. Administrative Procedures

40 TAC §725.1801

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§725.1801. Criminal History and Central Registry Background Checks [~~Check~~].

(a) Applicants to operate a child-care facility or family home, and operators after receiving a license, listing, registration, or certification of approval, at least once during each 24 months, must send the department required identifying information about:

(1)-(4) (No change.)

(5) director, owner, or operator of the facility or family home.

(b) Identifying information about board members of corporations or associations is not required unless they are also staff or regular volunteers or will regularly or frequently be at the facility or family home.

(c)-(d) (No change.)

(e) The identifying information must be sent to the licensing representative on a department form:

(1) (No change.)

(2) no later than two weeks after a new person(s) is at the facility or family home if criminal history check information is required but has not been sent.

(f) If the department obtains information from any law enforcement agency or its Central Registry indicating that a person at a facility or family home has a relevant criminal history or background finding , licensing staff will inform the governing body or administrator. Other releases of information are described in subsection (j) of this section and will be released in accordance with the department's rules found in Subchapter PP of this chapter (relating to Release Hearings). The facility must take appropriate action as a result of this information.

(g) Information about criminal history records and Central Registry records that the department receives are privileged information for exclusive use by the department and people authorized to receive the records. [~~Licensing staff must share the criminal history record or Central Registry record with the facility within ten work-days after receiving the record.~~] Except on court order or with the consent of the person being investigated, the records may not be released to any other person or agency.

(h) An application for a license, certification, registration, or listing may be denied or a license, certification, registration, or listing may be revoked based on the results of a central registry or criminal history check. The department shall deny an application or renewal for a license, certificate, listing or registration [~~registering a family home~~] or shall revoke a license, certificate, or family home's listing or registration if the results of the background or criminal history check conducted by the department show that a person has been convicted of an offense under Title 5 or 6 of the Penal Code, or Chapter 43, Penal Code , or any like offense in another state.

(i) A child-care facility or registered family home is required to pay to the department a fee of $2.00 which does not [~~to~~] exceed the administrative costs the department incurs in conducting background and criminal history checks under this section.

(j) In addition to other release of information under statutes and department rules, the department will release central registry background information in accordance with §725.4051 of this title (relating to Release and Use of Confidential Information Under Necessary Circumstances), and Subchapter PP of this chapter (relating to Release Hearings).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716269
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter U. Day Care Licensing Procedures

40 TAC §725.2027

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§725.2027. Opportunity to Show Rehabilitation.

(a) If an applicant/licensee/certificate holder/registrant/listee wishes to employ an individual in contact with children who has been convicted of a criminal offense, the applicant/licensee/certificate holder/registrant/listee must send a request to the director of licensing establishing that rehabilitation has occurred. The facility/family home must establish that rehabilitation has occurred to the extent that the person's behavior is not a substantial risk to children. If children are in care at the facility, the individual must not be in contact with the children until rehabilitation is established. Documentary evidence to be submitted for consideration in determining rehabilitation includes:

(1) Copy of the record of judicial finding, conviction, or abuse/neglect central registry background notification [~~conviction~~].

(2)-(3) (No change.)

(4) Nature and seriousness of the crime and/or abuse/neglect central registry background.

(5) The extent and nature of the person's past criminal or abuse/neglect central registry background [~~activity~~].

(6) (No change.)

(7) The amount of time that has elapsed since the person's last criminal or abuse/neglect central registry background activity.

(8) Evidence of rehabilitative effort [~~during and after incarceration~~].

(9) The conduct and work activity of the person [~~before and after the criminal activity~~].

(10)-(12) (No change.)

(b) The applicant/licensee/certificate holder/registrant/listee is entitled to be notified of the department's decision on the request to employ persons with previous convictions.

(c) Rehabilitation will not be granted for offenses of Title 5 of the Penal Code (Offenses Against the Person); Title 6 of the Penal Code (Offenses Against the Family); and Chapter 43 of Title 9 of the Penal Code (Public Indecency).

(d) Rehabilitation may not be granted for any finding listed on the Central Registry.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716270
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter PP. Release Hearings

40 TAC §725.4051

The amendment is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The amendment implements the HRC, Chapters 40 and 42.

§725.4051. [~~Emergency~~] Release and Use of Confidential Information Under Necessary Circumstances .

(a) Abuse [~~Usually, abuse~~] or neglect information is not released to the public pending the results of a release hearing. However, the department may release information [~~may be released~~] to the employer if the employer is a licensed or certified facility or a registered or listed family home or a facility approved to operate under accreditation or an accrediting organization if the department determines that the presence of the alleged perpetrator constitutes an immediate threat or danger to the health, safety, or welfare of the children.

(b) The department may also release abuse or neglect information to the entities listed in subsection (a) of this section if the department determines that the information is necessary to allow the facility to safeguard children's health, safety, or welfare. Under those circumstances, the department will not name any reporters to the facility.

(c) [~~(b)~~] If the alleged perpetrator is a licensee, registrant, listee, or certificate holder, the information may be released for the purpose of justifying a request for appropriate judicial relief or for notifying parents of children in care, or both.

(d) [~~(c)~~] A release hearing must be offered even if the information is released as listed in subsections (a)-(c) of this section [~~on an emergency basis~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716271
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter KKK. Adoptive Home Screening

40 TAC §§725.6070–725.6072

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §§725.6070-725.6072, concerning adoptive home screening requirements, adoptive home screening update, and qualifications to perform an adoptive home screening, in its General Licensing Procedures chapter. The new sections are proposed in new Subchapter KKK, Adoptive Home Screening. The purpose of the new sections is to include minimum standards for adoptive home screenings and minimum qualifications for persons who may perform the screenings to protect children placed for adoption. The new sections also implement legislation passed in the 75th Legislative Session that requires TDPRS to adopt rules providing minimum requirements for adoptive home screenings and minimum qualifications for persons who may perform adoptive screenings.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to protect the health, safety, and welfare of children placed for adoption. It is anticipated that adoptive home screenings performed by qualified persons prior to the placement of a child in an adoptive home will ensure that children are appropriately cared for in a safe and healthy home environment. There will be no effect on small businesses. The cost to adoptive families for obtaining adoptive home screenings will usually range from about $350 to $700. Adoptive home screening updates will usually range from about $100 to $500.

Questions about the content of the proposal may be directed to Joanna Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Joanna Taylor, Texas Department of Protective and Regulatory Services E-550, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Texas Family Code, §162.0025 which requires the agency to promulgate rules for minimum requirements for adoptive home screenings and the Human Resource Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The new sections implement HRC, Chapters 40 and 42 and Texas Family Code §162.0025.

§725.6070. Adoptive Home Screening Requirements.

(a) An adoptive home screening must be completed before a child is placed in the home of a person applying to adopt the child unless the child is being adopted by a member of the child's family related by the second degree of consanguinity or affinity.

(b) The adoptive home screening must include at least:

(1) an individual interview with each applicant;

(2) an individual interview with each child in the home and any other person living full or part time with the family;

(3) a joint interview with the adoptive applicants or a family group interview;

(4) a visit to the home when all members of the household are present; and

(5) contact, by telephone, in person, or by letter, with each adult child of the adoptive applicants no longer living in the home.

(c) An adoptive home screening must include all available information about the adoptive applicants regarding the following:

(1) motivation for adoption;

(2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide an adoptive home;

(3) quality of marital and family relationships in relation to the family's ability to provide an adoptive home;

(4) applicant's feelings about their childhood and parents, including any history of abuse or neglect and their resolution of such experience;

(5) values, feelings, and practices in regard to child discipline and care;

(6) sensitivity to, and feelings about, children who may have been subjected to abuse, neglect, separation from, and loss of their biological family if the applicants are planning to adopt a child who is not a newborn;

(7) sensitivity to, and feelings about, birth families of children placed for adoption; expectations about any on-going relationship with the birth family;

(8) attitude of the extended family regarding adoption;

(9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide an adoptive home and to maintain the cultural or ethnic identity of a child from a different background;

(10) expectations of, and plans for, adoptive children;

(11) behavior, background, special needs status or other characteristics of a potential adoptive child that the family cannot accept; and

(12) financial status and ability to support a child, including employment history and insurance coverage.

(d) An adoptive home screening must include an evaluation of each of the required components of this section in relation to the specific needs of the child the family is planning to adopt.

§720.6071. Adoptive Home Screening Update.

(a) If a child has not been placed with the adoptive applicants within six months of the time the adoptive home screening is completed, the adoptive home screening must be brought up-to-date within the 30-day period before a child is placed in the home. The written update must include:

(1) review and any required updating of each category of information in the adoptive home screening; and

(2) documentation of at least one visit to the adoptive home within the six months prior to placement.

(b) If a family screened for the adoption of one child plans to adopt another child (either in addition to or instead of the child for whom the screening was done), an adoptive home screening update must be done relating to the needs of the specific child the family is planning to adopt before the child is placed in the home.

§720.6072. Qualifications to Perform an Adoptive Home Screening.

(a) Persons performing an adoptive home screening must have one of the qualifications specified in paragraphs (1)-(2) of this subsection:

(1) a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include the following:

(A) a minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(B) at least 350 hours of formal, supervised field placement or practicum with a social service or human services agency; or

(2) a master's degree in a human services field and at least three years of supervised child-placing experience.

(b) A person with a bachelor's degree from an accredited college or university may collect the information and prepare the adoptive home screening. The evaluation and sign-off on the adoptive home screening must be done by a person meeting the qualifications outlined in paragraphs (1) or (2) of subsection (a).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716285
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Part XX. Texas Workforce Commission

Chapter 809. Child Care and Development

Subchapter D. Client Eligibility Requirements

40 TAC §809.79

The Texas Workforce Commission (Commission) proposes new §809.79, concerning penalties and sanctions regarding violation of the Parent Responsibility Agreement executed pursuant to §809.78 relating to the Parent Responsibility Agreement, as well as the exceptions to the requirement of a Parent Responsibility Agreement.

Proposed §809.79(a), provides certain sanctions for failure of the "parent or caretaker" of a child to comply with the requirements of §809.78. Failure to comply with §809.78(b)(1) results in a sanction of an additional monthly fee of $25 for the noncomplying parent or caretaker until the parent or caretaker achieves compliance with the subsection. Failure to comply with §809.78(b)(2) results in a fine of an additional monthly fee of $25 for up to six months. Failure to comply with §809.78(b)(3) results in an additional monthly fee of $25 until the first month following the first full month in which the child in question has no unexcused school absences.

The proposed rule provides in §809.79(b) that a Parent Responsibility Agreement is not required pursuant to §809.78 if the paternity of the child in question cannot be established, if the child is the product of an incestuous relationship, or if the parent of the child has been the subject of domestic violence. In addition the terms in question are defined in the new section.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule. Mr. Townsend has certified that there will be no foreseeable impact on local economies or overall employment as a result of enforcing or administering the proposed rule.

Charlotte Brantley, Director of Child Care/Work & Family Clearinghouse, has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be a more positive and effective implementation of House Bill 1863, 74th Legislature, Regular Session. Specifically, it is anticipated that the proposed rule will encourage parents and caretakers to comply with §809.78, while at the same time protecting parents or caretakers who might be at risk for such compliance. There is no anticipated adverse impact on small business as a result of enforcing or administering the proposed rule. Ms. Brantley has also determined that there are no anticipated economic costs to persons who are required to comply with the rule other than the sanctions as set out above. Since these sanctions will be assessed only upon noncompliance, it is anticipated they will not be of a significant amount in the aggregate. The exact amount of the impact is, at this time, incalculable and unknown.

All official comments submitted to Charlotte Brantley will be considered before the final rule is adopted. Comments on the proposed rule may be submitted to Charlotte Brantley, Director of Child Care/Work & Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room

416T, Austin, Texas 78778, (512) 936-3227. Comments may also be submitted via fax to Ms. Brantley at (512) 936-3223 or e-mailed to: cbrantle@twc.state.tx.us. Comments must be received by the Commission by 5:00 p.m. on January 20, 1998 for consideration.

The new rule is proposed under Texas Labor Code §301.061, which provides that the Commission has the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new rule affects the Texas Labor Code, Title 4.

§809.79. Parent Responsibility Agreement, Sanctions and Exceptions.

(a) The following shall apply to sanctions for noncompliance with the Parent Responsibility Agreement.

(1) Definitions. For purposes of this subsection, the following words and terms used in this subsection shall have the following meanings unless the context clearly indicates otherwise.

(A) Sufficient documentation of current participation in, or completion of, a drug or alcohol abuse treatment program – Verifiable, written documentation from a person licensed by the State of Texas and thereby permitted to furnish drug or alcohol treatment services independently, that the parent or caretaker is currently enrolled in a medically supervised and approved drug or alcohol abuse program and is participating in said program as directed; or that said parent or caretaker has participated in and acceptably completed such a program, post noncompliance.

(B) Documentation of the parent's or caretaker's cooperation – The written documentation signed by a judge, sheriff, sheriff's deputy, constable, or other sworn and licensed peace officer of the State of Texas; or a school principal or assistant principal that such parent or caretaker is cooperating with appropriate authorities concerning the child's failure to attend school regularly.

(C) Appropriate authorities – The school principals, assistant principals, or school district counselors, of the school district or system in which the child is enrolled, as well as the other officials cited in subparagraph (B) of this paragraph.

(2) Sanctions. Failure by the parent or caretaker to comply with any of the provisions of §809.78 of this chapter may result in the sanctions provided as follows.

(A) Failure to comply with §809.78(b)(1) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of $25 per month until the parent or caretaker provides documentation of compliance.

(B) Failure to comply with §809.78(b)(2) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of $25 per month for a period of up to six months.

(C) Failure to comply with §809.78(b)(3) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of $25 per month until the first month following the next full month in which the child has no unexcused absences at the school the child attends.

(3) Exceptions from Sanctions. The penalties set out in paragraph (2) of this subsection shall not apply under the following circumstances.

(A) The sanction provided for under §809.79(a)(2)(B) of this section shall not be applied if the parent or caretaker provides sufficient documentation of current participation in, or completion of, a drug or alcohol abuse treatment program.

(B) The sanction provided for under §809.79(a)(2)(C) of this section shall not be applied if the parent provides documentation of the parent's or caretaker's cooperation with appropriate authorities concerning the child's failure to attend school.

(b) Exceptions From Parent Responsibility Agreement Requirements.

(1) For purposes of this subsection, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(A) Reasonable – Those efforts which a willing, committed person would make to establish paternity, including but not limited to, appropriate lawsuit in a court of competent jurisdiction to establish paternity.

(B) Incestuous – Sexual intercourse between persons as described in Texas Penal Code §25.02(a).

(C) Domestic Violence – Such mental or physical abuse committed against a person as would reasonably cause and did cause the injured person grievous bodily, emotional, or mental harm.

(2) Notwithstanding the requirements set forth in §809.78(b) of this chapter, the parent or caretaker is not required to comply with those requirements if one or more of the below situations exist.

(A) the paternity of the child cannot be established after a reasonable effort to do so;

(B) the child is the product of an incestuous relationship; or

(C) the parent of the child is a victim of domestic violence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716440
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–8812

♦ ♦ ♦

Subchapter E. Client Eligibility Process Requirements

40 TAC §809.89

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Workforce Commission proposes repeal of §809.89 concerning Assessing Required Parent Fees and new §809.89 concerning Assessing Required Parent Fees. The repeal will be concurrent with a revised §809.89 being published.

The new rule proposed concurrently with the repeal will include much of the language from the existing §809.89, but will also include additional language which the Commission deems appropriate in order to better carry out the purpose of certain legislation, i.e., House Bill 1863, 74th Legislature, as well as the Personal Responsibility And Work Opportunities Reconciliation Act of 1996, Public Law 104-193. The new portion of the rule applies to parents who are required to pay a parent fee and who reside in areas where the child care program will be under the direct management of a Local Workforce Development Board (see Texas Government Code, Chapter 2308 Subchapters F and G). The new rule gives the boards flexibility to locally set the policy for the amount of the fee. The monthly parent or caretaker fee may be set by the boards at no less than nine percent and no more than 20% of gross monthly income. In areas where the Commission manages the program, the fees will remain as they were under the prior rule.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rule is in effect there will be no fiscal impact for state or local government as a result of enforcing or administering the rule.

Charlotte Brantley, Director of Child Care/Work & Family Clearinghouse, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the purposes of the above cited legislation will be more meaningfully effectuated in that it will provide flexibility to the boards to accommodate any unique local conditions.

There will be no effect on small business.

Ms. Brantley has further determined that there will be an anticipated economic cost to persons who are required to comply with the rule as proposed in that fees will differ between program clients based on which entity will manage the program locally. The amounts are unknown and not ascertainable at this time.

All official comments submitted to Charlotte Brantley will be considered before the final rule is adopted. Comments on the proposed rule may be submitted to Charlotte Brantley, Director of Child Care/Work & Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room 416T, Austin, Texas 78778, (512) 936-3227. Comments may also be submitted via fax to Ms. Brantley at (512) 936-3223 or e-mailed to: cbrantle@twc.state.tx.us. Comments must be received by the Commission by 5:00 p.m. on January 20, 1998 for consideration.

The repeal is proposed under Texas Labor Code, §301.061, which provides that the Commission has the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed repeal affects the Texas Labor Code, Title 4.

§809.89. Assessing Required Parent Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716442
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission

Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–8812

♦ ♦ ♦

The new rule is proposed under Texas Labor Code, §301.061, which provides that the Commission has the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new rule affects the Texas Labor Code, Title 4.

§809.89. Assessing Required Parent Fees.

(a) The Child Care Management Services (CCMS) contractor must assess parent fees to all parents or caretakers based on the family's gross monthly income, with the following exception.

(1) Parents or caretakers who receive Temporary Assistance for Needy Families (TANF) are assessed no fee.

(2) Parents or caretakers who receive Supplemental Security Income (SSI) are assessed no fee.

(3) Parents who participate in the Food Stamp Employment and Training (FSE&T) program are assessed no fee.

(4) Parents or caretakers who receive Child Protective Services (CPS) are assessed no fee unless the Texas Department of Protective and Regulatory Services (TDPRS) caseworker or the CPS Family Preservations contract provider authorizes the CCMS contractor to assess fees to a parent.

(b) In families where the child is the only TANF or SSI recipient, the parent fee is assessed according to subsection (d) of this section.

(c) Teen parents who live with their parents and who are not covered under exceptions outlined under subsection (a) of this section must be assessed a parent fee. The parent fee is based solely on the teen parent's income.

(d) Parent fees for all parents not covered under exceptions outlined under subsection (a) of this section are assessed using the following formulas.

(1) In areas where the Commission directly manages child care services, the parent fee must be 9.0% of the family's gross monthly income if there is one child receiving Commission paid child care and 11% of the family's gross monthly income if there are two or more children receiving TWC paid child care.

(2) In areas where the Local Workforce Development Board (LWDB) directly manages child care services, the parent fee must be no less than 9.0% and no more than 20% of the family's gross monthly income. The LWDB must set the actual fee policy within this range in accordance with §809.4 of this title (relating to Board Procedures for Developing Additional Requirements for Child Care Services).

(e) Parent fees for children enrolled in Independent School District (ISD) pre-kindergarten extended day programs are reduced to reflect no charge to the parent for the portion of the day that is core pre-kindergarten. The parent fee is assessed at 65% of the usual fee if the core pre-kindergarten program is three hours per day. The fee is assessed at 33% of the usual fee if the core pre-kindergarten program is more than three hours per day.

(f) The CCMS contractor is not permitted to assess a parent fee that exceeds the cost of care.

(g) Parents who receive a child care subsidy from other state or federal programs such as the Job Training Partnership Act must

pay that amount in addition to the assessed parent fee. The CCMS contractor must request documentation of child care subsidies from the parent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716441
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–8812

♦ ♦ ♦

Subchapter I. Child Care Training Center Pilot Programs

40 TAC §§809.171–809.174

The Texas Workforce Commission (Commission) proposes new §§ 809.171-809.174, concerning the establishment and operation of the child care training center pilot programs.

One of the primary goals of the Commission is to prepare, place and retain individuals in employment. Texas Labor Code §302.003 directed the Commission to establish a program for providing training to recipients of public assistance in basic skills, child care, child care vendor entrepreneurial training and early childhood education to assist these individuals in making the transition into the workforce from public assistance and to increase the number of trained child care workers.

The proposed rules describe the operation of the child care training center pilot programs. Section 809.171 states that the purpose of the child care training center pilot programs is to provide child care training to recipients of public assistance. Section 809.172 defines terms used in the rules. Section 809.173 describes the criteria to be used by the Commission in selecting training centers for participation in the child care training center pilot programs. Section 809.174 lists some of the required elements for a contract with the Commission to provide services under the child care training center pilot programs.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed child care training center pilot programs rules. Mr. Townsend has certified that there will be no foreseeable impact on local economies or overall employment as a result of enforcing or administering the proposed child care training center pilot programs rules.

Charlotte Brantley, Director of Child Care/Work & Family Clearinghouse, also has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the provision of necessary job training to Temporary Assistance for Needy Families (TANF) recipients and an increase in the number of trained child care workers. There is no anticipated adverse impact on small business as a result of enforcing or administering the proposed child care training center pilot program's rules. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

All official comments submitted to Charlotte Brantley will be considered before the final rules are adopted. Comments on the proposed rules may be submitted to Charlotte Brantley, Director of Child Care/Work & Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room 416T, Austin, Texas 78778, (512) 936-3227. Comments may also be submitted via fax to Ms. Brantley at (512) 936-3223 or e-mailed to: cbrantle@twc.state.tx.us. Comments must be received by the Commission by 5:00 p.m. on January 20, 1998 for consideration.

The new rules are proposed under Texas Labor Code §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of Texas Workforce Commission programs and under Texas Labor Code §302.003(j).

The proposed rules affect Texas Labor Code Chapter 302, primarily §302.003.

§809.171. Purpose.

The purpose of the child care training center pilot programs is to establish pilot programs for providing training for recipients of public assistance in basic skills, child care, child care vendor entrepreneurial training and early childhood education to enable the trainees to obtain employment in the child care field.

§809.172. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Commission-The Texas Workforce Commission.

Public Assistance-Financial assistance under Texas Human Resources Code Chapter 31.

Trainee-A recipient of public assistance who is receiving training under the child care training center pilot program.

Training center-A child care facility licensed under Texas Human Resources Code, Chapter 42, which provides both academic coursework and practicum hours. The training center must directly provide either the academic or practicum hours, and may subcontract the other function.

§809.173. Training Center Selection Criteria.

(a) The child care training center pilot programs funded by the Texas Workforce Commission shall meet all requirements of Texas Labor Code, §302.003.

(b) Child care training center pilot programs will provide specific training and certification in a minimum of four geographic areas of the state, with at least one site in an urban area and at least one site in a rural area.

(c) The training center will be selected by the Commission through a Request for Proposal process. Evaluation of each proposal shall include consideration of:

(1) level of training of the staff employed by the training center and the training center's subcontractor;

(2) history of the child care facility offering practicum hours in delivering high quality care;

(3) ability to offer training which will result in academic credit which is accepted by colleges or universities in this state;

(4) ability to provide and maintain a mentor relationship with each trainee being trained by the training center;

(5) the provision of child care services to the children of trainees at the same discounted rate charged to other employees of the child care facility;

(6) experience and qualifications of proposed subcontractors; and

(7) utilization of all available resources to fund the program including private contributions as well as local, state and federal funds.

§809.174. Implementation Requirements.

If the Commission determines that a proposal is appropriate for funding through the child care training center pilot programs, the Commission may enter into a contract with the training center. All contracts with training centers will include the following:

(1) the names of the entities referring public assistance recipients to the training center and the method of referral;

(2) the number of academic and practicum hours which will be provided to each trainee by the training center;

(3) the timeline for implementation of the child care training center pilot program;

(4) the reporting requirements; and

(5) the format for trainee evaluations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716439
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 20, 1998
For further information, please call: (512) 463–8812

♦ ♦ ♦

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.414

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed ammendment to §1.414, which appeared in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11047).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716457
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: December 8, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

28 TAC §1.415

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed amendment to §1.415, which appeared in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11048).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716459
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: December 8, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 3. Life,Health and Accident Insurance and Annuities

Subchapter MM. Assessment

28 TAC §3.13001

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed new to §3.13001, which appeared in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11049).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716466
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: December 8, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 7. Corporate and Financial Regulation

Subchapter J. Examination Expenses and Assessments

28 TAC §7.1012

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed amendment to §7.1012, which appeared in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11051).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716464
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: December 8, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 25. Insurance Premium Finance

Subchapter E. Examinations and Annual Reports

28 TAC §25.88

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed amendment to §25.88, which appeared in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11052).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716461
Lynda Nesenholtz
Assistant General Counsel
Texas Department of Insurance

Effective date: December 8, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Commission on Jail Standards

Chapter 275. Supervision of Inmates

37 TAC §275.1

The Commission on Jail Standards has withdrawn from consideration for permanent adoption the proposed amendment §275.1, which appeared in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10260).

Issued in Austin, Texas, on December 5, 1997.

TRD–9716367
Jack E. Crump
Executive Director
Commission on Jail Standards
Effective date: December 5, 1997
For further information, please call: (512) 463–5505

♦ ♦ ♦

37 TAC §275.7

The Commission on Jail Standards has withdrawn from consideration for permanent adoption the proposed new §275.7, which appeared in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10632).

Issued in Austin, Texas, on December 5, 1997.

TRD–9716368
Jack E. Crump
Executive Director
Commission on Jail Standards
Effective date: December 5, 1997
For further information, please call: (512) 463–5505

♦ ♦ ♦

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Central Purchasing Division

1 TAC §113.11

The General Services Commission adopts amendments to §113.11 concerning delegated purchases. The amendment is adopted with changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10085).

The amendment will allow for implementation of Senate Bill (S.B.) 1752 and House Bill (H.B.) 1805, 75th Leg., R.S. (1997) which streamline and enhance the efficiency of the state procurement system. The amendments also result from recommendations made by the staff in cooperation with state agencies in a cooperative study with the General Services Commission regarding delegated purchases previously reviewed by the Commission. In subsection 113.11(e)(1)(A) the phrase "all commodity purchases in excess of $2,000 and not over $5,000" was changed to "all commodity purchases in excess of $2,000 and not over $10,000". In subsection 113.11(e)(1)(A) the phrase "the agency must make a written notation on the spot purchase form of all reference sources used" was changes to read "the agency must make a written notation in the purchase file of all reference sources used". In subsection 113.11(e)(2)(A) the phrase "all purchases in excess of $5,000" was changed to read "all purchases in excess of $10,000". New language was added in sentences 3 through 7 of subsection 113.11(e)(4) to combine commodities and services. It was decided that the new language would be consistent with rule section 113.10 that contains the language requiring commodities.

The amendments to section 113.11 will allow state agencies to purchase more effectively and in accord with new statutes and procedures.

One comment was received. The state agency group requested that the formal bids limit be set at $10,000 instead of $5,000. Additionally, a request was made to clarify pricing requirements for catalogue purchasing to indicate that such purchases under $2,000 do not require such pricing.

For - The Purchasing Subcommittee of the State Agency Coordinating Committee (SACC).

The General Services Commission staff agrees to amend language in rule §113.11 to establish a floor of $10,000 for formal bids, and a range of $2,000 to $10,000 for informal bids. The Commission disagrees with the comment recommending an amendment to §113(C)(1), which was cited incorrectly, to read " competitive bidding is not required for purchases, including catalog purchases of $2,000 or less". The GSC catalogue program can be accomplished administratively without a rule change for GSC purchasers. GSC believes the new statutory $2,000 limit applies to catalogue purchases; but these GSC rules do not govern the exempt purchases that may occur.

The amendment is adopted under the Texas Government Code, Title 10, Subtitle D, Section 2152.003 the was enacted by S. B. 1752, Acts of the 75th Legislature, R. S. (1997).

§113.11. Delegated Purchases.

(a) General delegation. The following purchasing functions are delegated to agencies:

(1) commodity purchases of goods that do not exceed $25,000;

(2)-(7) (No change.)

(b) (No change.)

(c) Provisions generally applicable to delegated purchases.

(1) Competitive bidding is not required for purchases of $2,000 or less.

(2)-(3) (No change.)

(4) The commission must solicit formal bids from all eligible vendors on the centralized master bidders list (CMBL) when making purchases in excess of $25,000. The commission waives the requirement for state agencies to solicit bids from all eligible vendors on the list when making purchases under subsection (e) of this section. State agencies must solicit from all eligible vendors on the CMBL when making service purchases in excess of $100,000 that the commission has determined should be advertised and awarded by the agency.

(5) (No change.)

(6) For purchases over $100,000, agencies shall consult with and receive approval of the commission for use of factors for bid evaluation other than price and meeting specifications.

(d) Withdrawal of delegated purchase authority. The commission will verify compliance with established procedures and will withdraw delegated purchase authority from an agency for continued violations after giving adequate warning. The commission will report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board the findings that a state agency has not followed the commission's rules or the laws related to the delegated purchases.

(e) Provisions applicable to particular delegated purchases.

(1) Commodity purchases. Commodity purchases may be made in accordance with the following provisions.

(A) Agencies must attempt to obtain at least three informal bids, including a minimum of two bids from historically underutilized businesses (including at least one bid each from a minority-owned business and a woman-owned business), on all commodity purchases in excess of $2,000 and not over $10,000. Agencies must meet competitive bidding requirements and may supplement the list of bidders obtained from the CMBL and Historically Underutilized Business (HUB) Directory with non-CMBL bidders if the purchase price does not exceed $5,000. Agencies must attempt to obtain at least three formal bids, including a minimum of two bids from HUBs (including at least one bid each from a minority-owned business and a woman-owned business), on all commodity purchases in excess of $10,000 and not over $25,000. Agencies may refer to the commission's HUB Directory, which is maintained and accessible electronically, to locate historically underutilized businesses. If an agency is unable to locate a minority-owned business and/or a woman-owned business from the commission's HUB Directory or other available sources, the agency must make a written notation in the purchase file of all reference sources used.

(B) All information required by the commission must be furnished on the approved commodity purchase form.

(2) Emergency purchases. The commission will approve payment for emergency purchases in accordance with the following provisions.

(A) At least three informal bids must be obtained whenever possible on all purchases in excess of $10,000.

(B) For an emergency purchase of goods or services exceeding $25,000, an agency must send a full written explanation of the emergency along with other documentation required by the commission for prepayment approval.

(C) The agency may contact the commission for advice and assistance in the handling of emergency purchases. The commission may not approve an invoice for an emergency purchase unless the agency has complied with the foregoing requirements. This rule does not apply to purchases made in accordance with the Texas Government Code, Chapter 418.

(3) Perishable items. Purchases made under this authority must be obtained through competitive bids, and appropriate documentation must be forwarded to the commission for approval.

(4) Services. Purchases of services estimated to cost no more than $100,000 per year are delegated and must be obtained through competitive bids, and appropriate documentation must be forwarded to the commission for approval. An agency is required to submit documentation to the commission for proprietary purchases of services over $25,000 and for purchases expected to cost more than $25,000 per year. Agencies must attempt to obtain at least three informal bids, including a minimum of two bids from HUBs (including at least one bid each from a minority-owned business and a woman-owned business), on all service purchases in excess of $2,000 and not over $10,000. Agencies must meet competitive bidding requirements and may supplement the list of bidders obt ained from the CMBL and Historically Underutilized Business (HUB) Directory with non-CMBL bidders if the purchase price does not exceed $5,000. Agencies must attempt to obtain at least three formal bids, including a minimum of two bids from HUBs (including at least one bid each from a minority-owned business and a woman-owned business), on all service purchases in excess of $10,000 and not over $25,000. Agencies may refer to the commission's HUB Directory, which is maintained and accessible electronically, to locate historically underutilized businesses. If an agency is unable to locate a minority-owned business and/or a woman-owned business from the commission's HUB Directory or other available sources, the agency must make a written notation in the purch ase file of all reference sources used. For purchases of services estimated up to $25,000, state agencies shall solicit a minimum of three bids (two must be HUBs, one minority and one woman-owned business) from CMBL and HUB Directory Vendors located in the agencies' geographic region. For purchases of services estimated more than $25,000 and less than $100,000, state agencies shall, as a minimum, solicit bids from all CMBL and HUB Directory Vendors located in the agencies' geographic region. For purchases of services estimated to cost more than $100,000 per year, the commission must review any proposed specifications or statements of work and determine whether the commission or the agency should make the advertisement and award. The commission may determine that the service should be advertised to the commission's bidders lists, in which case the commission will make the award in accordance with normal open market procedures. If no competitive advantage would be obtained by having the commission make the advertisement and award, the commission may permit the agency to do so.

(5)-(7) (No change.)

(f) (No change.)

(g) Protest Procedures. State agencies shall adopt protest procedures and submit a copy to the commission during the post-payment audit of the agency's purchasing documents or upon request by the commission.

(h) Procurement Plan. State agencies shall formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the Commission's Procurement Manual. An agency must submit a copy of the procurement plan during the commission's audit of the agency's purchasing documents or upon request by the commission.

(i) Debarred Vendors. State agencies shall ensure that debarred vendors do not participate in state contracting and will establish procedures to ensure awards are not made to debarred vendors.

(j) Reporting Purchasing Activity under Delegated Authority. State agencies will report to the commission, not later than May 1 of each year regarding the previous six-month period and on November 1 of each year regarding the preceding fiscal year, information related to delegated purchasing activity for goods and services in the form prescribed by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716323
Judy Ponder
General Counsel
General Services Commission
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 463–3960

♦ ♦ ♦

Part XV. Texas Health and Human Services Commission

Chapter 355. Medicaid Reimbursement Rates

Subchapter A. Cost Determination Process

1 TAC §355.102-355.105, §355.111

The Texas Health and Human Services Commission ("HHSC" or "the commission") adopts amendments to §§355.102 - 355.104, 355.105, and 355.111, concerning Medicaid Reimbursement Rates, without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10261). The text will not be republished. The adoption is submitted simultaneously with a proposal by the Texas Department of Human Services to amend corresponding provisions of Title 40, chapter 20, TAC.

Justification for the amendments is that the proposed changes will enable providers of DHS services to submit more accurate cost reports by clarifying allowable and unallowable costs for cost reporting purposes. The proposed changes will also give providers more flexibility to document costs related to the 1997 transition year for the cost determination rules.

The amendments will function by clarifying the intent of the cost determination rule provisions. The amendments will clarify current allowable and unallowable cost rules in certain areas including related party leases, losses due to theft, related party costs determined at actual costs, cost of private aircraft, and Medicaid as payor of last resort. Clarifications are also being made to the rules regarding the reporting of expenses and revenues, direct voucher payment systems, and reporting net interest income after offsetting interest income against interest expense. A provision requiring that supportive documentation for the 1997 cost report be dated by June 30, 1997 is being deleted.

In addition, for community-based programs the amendments will, in the administrative contract violation section, streamline the appeals process for contract cancellation resulting from failure to submit a properly completed cost report. The amendments eliminate the informal reconsideration process while retaining the provider's right to a formal appeal of the contract cancellation.

The commission received no comments regarding the adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 32, which authorizes the commission to administer the medical assistance program; and under Texas Government Code §531.021, which provides the commission with the authority to administer federal medical assistance funds.

The amendments implement the Government Code §531.021 and §531.033, and Human Resources Code §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716448

Executive Deputy Commissioner

Texas Health and Human Services Commission

Effective date: December 29, 1997

Proposal publication date: October 17, 1997

For further information, please call: (512) 424-6576

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquified Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §§9.5, 9.6

The Railroad Commission of Texas adopts amendments to §§9.5 and 9.6, relating to licensing requirements, and examination requirements and renewal of certified status, without changes to the versions published in the October 24, 1997, issue of the *Texas Register* (22 TexReg 10488). Section 9.5 specifies licensing requirements, including courses required, and §9.6 specifies examination requirements for management and employees and procedures to renew certified status annually, including fees involved for these activities.

In §9.5(i)(1)(B), the Commission adopts language requiring individuals who want to attend the 64-hour course to pay the course fee established by the Commission. In the past, the Commission charged fees for course attendance. The established fee at the time of this rulemaking is $275 per individual; however, the adopted language will allow that fee to fluctuate as needed to cover costs associated with holding the 64-hour course in any given location. For example, if the Commission schedules a 64-hour course in a location where a meeting room rental is required, the fee may be adjusted in order to cover the cost for holding the 64-hour course in that location.

No substantive amendment is adopted in §9.6, and the requirements for the LP-gas industry will not change. The amendment is adopted in order to add some language to subsection (e)(1) to specify how the $25 annual renewal fee will be divided between the Commission's LP-Gas Section and the Alternative Fuels Research and Education Division (AFRED) according to House Bill 1, 75th Legislature, Regular Session, Article IX, section 112.

The commission received no comments on the proposal.

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 2, 1997.

TRD-9716108

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas
Effective date: December 22, 1997
Proposal publication date: October 24, 1997
For further information, please call: (512) 463–7008

♦ ♦ ♦

Chapter 15. Alternative Fuels Research and Education Division

Subchapter D. Highway Signage Rebate Program

16 TAC §§15.305, 15.310, 15.320

The Railroad Commission of Texas adopts amendments to §§15.305, 15.310, and 15.320, relating to the Alternative Fuels Research and Education Division's highway signage rebate program, without changes to the versions published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10222). The commission adopts these amendments to broaden certain eligibility requirements, continue the program in effect past January 1, 1998, and update the office to which applications are to be mailed or hand-delivered.

Changing the definition of "eligible signage" in §15.305 extends eligibility to highway signs constructed from standard- size materials. Deleting the definition of "program period" in §15.305 and amending subsection (b) of §15.310 continues the highway signage rebate program in effect past January 1, 1998. The amendment to §15.320 changes the room number of the commission office to which applications are to be mailed or hand- delivered.

The commission received no comments on the proposed amendments.

The commission adopts the amendments under Texas Natural Resources Code, §113.241, which authorizes the commission to adopt rules relating to educating the public regarding the use of LPG and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state; Texas Natural Resources Code, §113.243(c)(2), which authorizes the commission to implement marketing and advertising programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and Texas Natural Resources Code, §113.243(c)(6), which authorizes the commission to use money in the Alternative Fuels Research and Education Fund, General Revenue-Dedicated, to implement programs necessary to promote the use of LPG or other environmentally beneficial alternative fuels.

Texas Natural Resources Code §§113.241, 113.243(c)(2), 113.243(c)(6), 113.248, 113.249, and 113.250 are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716376
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 463–7008

♦ ♦ ♦

Subchapter E. Manufactured Housing Incentive Program

16 TAC §15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, 15.450

The Railroad Commission of Texas adopts new §§15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, and 15.450, relating to the establishment and administration of a marketing incentive program that provides for an incentive to be paid to manufactured housing retailers or salespeople selling manufactured housing units equipped with appliances that use propane (liquefied petroleum gas; LPG), without changes to the versions published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10223).

More than one-third of all new single-family homes sold in Texas in 1995 were manufactured housing. Two-thirds of Texas manufacturers ship 75 percent or more of their units with all-electric resistance heating appliances, according to a recent Railroad Commission survey. The commission, in a study of the manufactured housing market, found that less than one-half of one percent of the units currently sold in Texas are equipped with both propane water heaters and furnaces.

One-half of all new manufactured home purchases are made by families with annual household incomes of less than $20,000. These purchasers' principal source of information on fuel options is the manufactured housing salesperson, who typically prefers to sell all-electric units because all electric units are easier to install, as they require connections to only one energy source. Consequently, electric units are more readily available. The incentive is intended to encourage manufactured housing salespeople and retailers to educate consumers on the energy savings they could achieve with propane. A typical family purchasing a manufactured housing unit with a propane furnace and water heater can save approximately $500 a year over a comparable unit using electric resistance heating and water heating equipment. Actual savings will vary depending on the capacity of the appliances, the size of the manufactured housing unit, individual appliance efficiency and other factors. Purchasers of manufactured housing units with propane water heaters will be eligible to apply for the commission's consumer rebates.

The commission expects to set the initial incentive to be paid to the manufactured housing retailer or salesperson at $150 per eligible manufactured housing unit sold. Participation in the incentive program is voluntary, and manufactured housing incentive payments are made entirely at the discretion of the Railroad Commission of Texas. No person has a legal entitlement or other right to an incentive payment under this program.

The commission views the proposed manufactured housing incentive program as an innovative tool for encouraging manufactured housing retailers to inform Texas consumers about the cost savings and environmental benefits of propane, to advance the commission's statutory charge to increase public awareness and assist in marketing of environmentally beneficial alternative fuels.

New §15.401 states the purpose of the program, and new §15.405 defines terms used in the rules. New §15.410 establishes the manufactured housing incentive program and authorizes the commission to terminate the program at any time. New §15.415 authorizes the commission to set the incentive amount and specifies the limitations on it. Eligibility requirements are described in new §15.420. New §15.425 outlines the application procedure. New §15.430 states the procedure for making incentive payments. New §15.435 outlines a procedure for assignment of an incentive payment from a manufactured housing dealer or salesperson to a propane dealer. The terms of compliance for participants, including both manufactured housing retailers and salespersons and propane dealers, and the commission's authority to conduct on-site investigations to enforce it, are found in new §15.440. New §§15.445 and 15.450 outline the division's procedure for handling complaints and the penalties for violations of commission rules by program participants.

The commission received no comments on the proposed rules.

The new sections are adopted under Texas Natural Resources Code, §113.241, which authorizes the commission to adopt rules relating to educating the public regarding the use of LPG and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state. Texas Natural Resources Code, §113.243(c)(2), authorizes the commission to implement marketing and advertising programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers. Texas Natural Resources Code, §113.243(c)(7), authorizes the commission to use money in the Alternative Fuels Research and Education Fund, now Alternative Fuels Research and Education Fund Account 101, General Revenue- Dedicated, for costs relating to programs necessary to promote the use of LPG or other environmentally beneficial alternative fuels. Texas Natural Resources Code, §§113.248 and 113.249, prescribe civil penalties and establish an enforcement mechanism for violations of the Texas Natural Resources Code or commission rules.

Texas Natural Resources Code, §§113.243(c)(2) and (7), 113.248, and 113.249 are affected by the new rules. §15.401. Purpose. The purpose of §§15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, and 15.450 of this chapter (relating to the Alternative Fuels Research and Education Division) is to establish a manufactured housing incentive program that increases public awareness and assists in the marketing of propane as an environmentally beneficial alternative fuel. These sections, referred to collectively as the manufactured housing incentive program rules, outline the commission's mechanisms for determining the eligibility of applicants; application requirements; administrative procedures; incentive amounts and adjustments; terms of compliance; penalties for violations; and program termination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716375
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 463–7008

♦ ♦ ♦

Part III. Texas Alocholic Beverage Commission

Chapter 33. Licensing

Application Procedure

16 TAC §33.7

The Texas Alcoholic Beverage Commission adopts a new §33.7, with changes to the text as published in the October 17, 1997 edition of the *Texas Register*, (22 TexReg 10226-10227).

This rule is adopted to implement Alcoholic Beverage Code, §104.06. That provision requires the Alcoholic Beverage Commission to determine which licensees and permittees, authorized to sell for on-premises consumption, receive 51 percent or more of their income from the sale of alcoholic beverages. This determination is used to assess compliance with the warning sign requirements of §31, Article 4413 (29ee) of the Revised Statutes, governing a license to carry a handgun.

The commission determined that collection of this information is most efficiently accomplished by requiring licensees and permittees to furnish the relevant information at the time of license or permit application or renewal. The first sentence of paragraph (c) was modified from the text as originally published to make the language of the rule clearer.

No comments were received regarding the adoption of the new section.

The new section is adopted pursuant to the authority of Alcoholic Beverage Code, §5.31.

Cross Reference to Statute: Alcoholic Beverage Code, §104.06, is affected by this rule.

§33.7. Warning Sign Requirements.

(a) This rule is adopted pursuant to §104.06 of the Alcoholic Beverage Code.

(b) Each applicant for an original or renewal of a beer and wine retailer's permit, mixed beverage permit, private club registration permit, or retail dealer's on-premise license shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

(c) Holders of a food and beverage certificate are not subject to the provisions of this section, however, the holders of wine and beer retailer's permits and retail dealer's on-premise licenses are subject to record keeping provisions set forth in §33.5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716320
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission

Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 206–3304

♦ ♦ ♦

Chapter 37. Legal

Rule of Practice

16 TAC §37.46

The Texas Alcoholic Beverage Commission adopts new §37.46, without changes to the text as published in the October 17, 1997, edition of the *Texas Register*, (22 TexReg 10227). The rule governs public participation in contested case hearings.

This rule was adopted to implement the provisions of §5.431 of the Alcoholic Beverage Code. The rule allows members of the public a reasonable opportunity to appear in a contested case and speak on any relevant issue. Under the provisions of the rule, hearings examiners may still control the conduct of the hearing, the order of witnesses or

No comments were received regarding the adoption of the new rule.

The rule is adopted pursuant to the authority of the Alcoholic Beverage Code, Chapter 5, Subchapter B, §5.31 and §5.435. Cross Reference: Alcoholic Beverage Code, §75.435, is affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716319
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 206–3304

♦ ♦ ♦

Penalties

16 TAC §37.61

The Texas Alcoholic Beverage Commission adopts a new §37.61 with changes to the proposed text as published in the October 17, 1997 edition of the *Texas Register*, (22 TexReg 10227-10228). The rule governs the conditions under which licenses and permits issued by the Alcoholic Beverage Commission can be suspended.

This rule is adopted to implement the provisions of §11.64 of the Alcoholic Beverage Code, and to comply with the legislative directive contained in that statute to adopt a rule.

Paragraph (a) of the rule lists the statutory violations for which the commission may deny a permittee or licensee the right to pay a civil fine in lieu of suspension. This paragraph was amended from the text as published to add a description of each cited offense. The commission concluded this amendment made the rule easier for those subject to the rule to understand.

Paragraph (b) of the rule lists the factors the commission must consider in denying a licensee or permittee the right to pay a civil fine. These factors are a reflection of the statutory requirements. In response to a suggestion by the Texas Package Stores Association, the second clause of paragraph (b)(1) was added to the text as originally published. The commission concluded that the additional clause serves to explain why the license or permit held by the violating permittee or licensee is a factor to be considered in decisions governed by this rule.

Paragraph (c) was adopted to give a partial explanation of the statutory phrase "aggravating or ameliorating circumstances."

The Mothers Against Drunk Driving suggested that the phrase "or their employee" be added at the end of paragraph (c)(1). The commission disagreed with this suggestion because under §1.04(11) and (16) of the Alcoholic Beverage Code, the terms licensee and permittee includes employees of the license or permit holder.

The Mothers Against Drunk Driving further suggested that paragraphs (b)(3) and (c)(2) were duplicative. The commission disagreed. Paragraph (b)(3) reflects a statutorily imposed factor to be considered by the commission in making decisions governed by this rule. Paragraph (c)(2) is adopted as one of several elements influencing the question of whether aggravating or ameliorating circumstances exist. Additionally, the commission concluded that considerations of the "number, kind and frequency" of past violations is substantively different than consideration of simply the "past record of violations."

The Mothers Against Drunk Driving further expressed a concern that the inclusion of paragraph (c)(3) implied that suspensions would be imposed only on those industry members whose violations resulted in injury to or the death of another. The commission felt this concern was unwarranted. Paragraph (c)(3) is no more than one among several equal factors to be considered.

This rule is adopted under the Alcoholic Beverage Code, Chapter 5, Subchapter B, §5.31 and Chapter 11, Subchapter A, §11.64.

Cross Reference to Statute: The following provisions of the Alcoholic Beverage Code are affected by this rule: §§11.61, 11.64, 22.12, 28.11, 61.71, 61.74, 69.13, 71.09, 101.63, 106.03 and 106.06.

§37.61. Suspensions.

(a) The administrator may deny a licensee or permittee the option of paying a civil fine in lieu of a suspension of the license or permit if the licensee or permittee has violated one or more of the following provisions of the Alcoholic Beverage Code:

(1) §11.61(b)(14): sale to an intoxicated person by a permittee;

(2) §22.12: breach of the peace on the premises of a package store;

(3) §28.11: breach of the peace on the premises of a mixed beverage permittee;

(4) §61.71(a)(5): sale to a minor by a licensee;

(5) §61.71(a)(6): sale to an intoxicated person by a licensee;

(6) §61.74(a)(14): sale to a minor by a licensee;

(7) §69.13: breach of the peace on the premises of an on-premise retail beer dealer;

(8) §71.09: breach of the peace on the premises of an off-premise retail beer dealer;

(9) §101.63: sale to an intoxicated person;

(10) §106.03: sale to a minor;

(11) §106.06: purchase of alcohol for a minor;

(12) or any offense relating to gambling or prostitution.

(b) In determining whether to deny a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator shall consider:

(1) the type of permit or license held by the violating licensee or permittee and whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;

(2) the type of violation or violations charged;

(3) the licensee's or permittee's record of past violations; and

(4) any aggravating or ameliorating circumstances.

(c) Aggravating or ameliorating circumstances may include but are not limited to:

(1) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;

(2) the number, kind and frequency of violations of the Alcoholic Beverage Code and rules of the commission committed by the licensee or permittee;

(3) whether the violation caused the serious bodily injury or death of another; and/or

(4) whether the character and nature of the licensee's or permittee's operation are reasonably calculated to avoid violations of the Alcoholic Beverage Code and rules of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716318
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 206–3304

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 161. General Provisions

22 TAC §161.1

The Texas State Board of Medical Examiners adopts an amendment to §161.1, concerning meetings, without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10229) and will not be republished.

The amendment is necessary because a new committee was created to oversee the practice of telemedicine. The amendment will outline the responsibilities of the committee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716171
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 163. Licensure

22 TAC §163.16, §163.17

The Texas State Board of Medical Examiners adopts new §163.16 and §163.17, concerning licensure, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9211) and will not be republished.

The new sections are adopted as a result of Senate Bill 1295, 75th Legislature. The sections relate to licensure of certain international medical graduates who have successfully completed a fifth pathway program.

No comments were received regarding adoption of the new rules.

The new sections are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716172
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997

Proposal publication date: September 12, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 165. Medical Records

The Texas State Board of Medical Examiners adopts the repeal of §165.1 and §165.2 and new §§165.1-165.3, concerning medical records, patient access to diagnostic imaging studies in physician's office, and medical record release and charges. The repeal of §165.1 and §165.2 and new §165.2 and §165.3 are adopted without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10230) and will not be republished. New §165.1 is adopted with nonsubstantive changes.

Senate Bill 1607, 75th Legislature, mandates that rules be written to define requirements for medical record retention. Reorganization of the chapter was felt necessary, therefore new sections are adopted with simultaneous repeals of existing language.

No comments were received regarding adoption of the repeals. The following comments were received regarding §§165.1-165.3:

One comment was received from Texas Medical Association (TMA). This organization requested the deletion of the provision in the rule requiring a physician to release billing records pertaining to medical treatment of a patient if specifically requested to do so. This organization maintained that billing records are different from medical records and therefore are not necessarily governed by the Medical Practice Act. This organization maintained that a billing record is a business record of a professional and is clearly distinguishable from records that are created and maintained relating to the clinical history and needs of a patient. This group commented that the decision whether or not to release business records should remain within the discretion of the physician.

The following are the reasons why the Board disagrees with the submissions and proposals set forth above: The comments are not germane, as they do not pertain to a provision which is being altered. The referenced provision is already in effect under current board rules and will be unaffected by the proposed rule changes.

22 TAC §165.1, §165.2

The repeals are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716388
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§165.1-165.3

The new sections are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§165.1. Medical Records.

(a) Each licensed physician of the Board shall maintain an adequate medical record for each patient. For purposes of this section, "adequate medical record" shall mean any records documenting or memorializing the history, diagnosis, and treatment of any patient.

(b) A licensed physician shall maintain adequate medical records of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the physician.

(c) If a patient was younger than 18 years of age when last treated by the physician, the medical records of the patient shall be maintained by the physician until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(d) A physician may not destroy medical records that relate to any civil, criminal or administrative proceeding if the physician knows the proceeding has not been finally resolved.

(e) Physicians shall retain medical records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716387
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 29, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 166. Physician Registration

22 TAC §166.2

The Texas State Board of Medical Examiners adopts an amendment to §166.2, concerning continuing medical education, without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10232) and will not be republished.

The amendment defines which continuing medical education courses involve the study of medical ethics and/or professional responsibility.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the

Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716173
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 174. Telemedicine

22 TAC §174.16

The Texas State Board of Medical Examiners adopts new §174.16, concerning registration requirements, without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10233) and will not be republished.

The new section will outline the annual registration and continuing medical education requirements for those persons who hold a special purpose license for practice of medicine across state lines.

No comments were received regarding adoption of the new rule.

The new section is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716174
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 175. Schedule of Fees and Penalties

22 TAC §175.1

The Texas State Board of Medical Examiners adopts an amendment to §175.1, concerning fees, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9213) and will not be republished.

The amendment is adopted to increase physician annual registration fees by $10. In order to meet legislative requirements, the agency will need to generate additional revenue.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §2.09(a) which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716175
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 179. Investigation Files

22 TAC §179.4

The Texas State Board of Medical Examiners adopts an amendment to §179.4, concerning other reports, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9213) and will not be republished.

The amendment is necessary due to recently enacted legislation. Senate Bill 1566, 75th Legislature requires peer review committees on health care entities to report professional review action that adversely affects clinical privileges of the physician assistant or acupuncturist.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §209(a) which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716176
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: December 23, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 185. Physician Assistants

22 TAC §§185.2, 185.4, 185.6, 185.19 - 185.23, 185.25

The Texas State Board of Medical Examiners adopts amendments to §§185.2, 185.4, 185.6, 185.19, 185.20, 185.22, 185.23, 185.25, the repeal of §185.21 and new §185.21, concerning physician assistants, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9590) and will not be republished.

The amendments update the definition for physician assistant; add documentation requirements for licensure; clarify documentation which shall be submitted as part of the renewal process; update grounds for denial of licensure and for disciplinary action; add reporting requirements for investigations and update Prehearing procedures. Section 185.21 is being repealed and replaced by new §185.21 in order to remove the existing language and to add new information regarding Administrative Penalty for Physician Assistants.

No comments were received regarding adoption of the rules.

The amendments and new rule are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act, and the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1, §23, which authorizes the Texas State Board of Physician Assistant Examiners to adopt reasonable and necessary rules for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716177
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §185.21

The repeal is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act, and the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1, §23, which authorizes the Texas State Board of Physician Assistant Examiners to adopt reasonable and necessary rules for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716178
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 193. Standing Delegation Orders

The Texas State Board of Medical Examiners adopts the repeal of §§193.1- 193.5, 193.8, 193.9 and new §§193.1-193.7, concerning standing delegation orders, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9216) and will not be republished.

The sections are repealed and replaced to re-organize and renumber the sections in Chapter 193. The sections are reorganized in accordance with House Bill 2846 and Senate Bill 1566.

The following comment was received regarding §193.6:

The Coalition for Nurses in Advanced Practice - This organization recommended a change in the language regarding on site physician visits, §193.6(b)(2). This organization proposed the following language for the rule:

"(2) visits the clinic at least once every ten days that the advanced practice nurse or physician assistant is on site providing care, and that the visits occur during regular business hours to observe and provide medical direction and consultation to include, but not limited to..."

This organization comments that this change in language will avoid confusion about the required frequency of visits. This organization noted that the language in House Bill 2846 was specifically written to ensure that rules did not require the physician to be on site more frequently than the nurse practitioner or physician assistant. This organization noted that it is very important the rule clearly states that the frequency of physician visits is based on the number of days the nurse practitioner or physician assistant is at that site, rather than the number of days that the clinic is open.

The following are the reasons why the Board disagrees with the submissions and proposals set forth above:

The rule as proposed by the Board tracks the language of House Bill 2846. The primary change in the proposed Board Rule from the specific wording of House Bill 2846 is the addition of the phrase "during regular business hours." The additional language does not alter the plain meaning of the rule as originally written in House Bill 2846 and therefore the intent of that legislation is properly preserved. The addition of this language to the text as written in House Bill 2846 will not result in confusion regarding the required frequency of visits.

22 TAC §§193.1 - 193.5, 193.8, 193.9

The repeals are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716179
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§193.1-193.7

The new sections are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716180
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §193.7

The Texas State Board of Medical Examiners adopts the repeal of §193.7, relating to registration requirements for radiological technologists, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8521) and will not be republished.

In order to implement provisions of the Medical Radiologic Technologists Certification Act, Texas Civil Statutes, Article 4512m, extensive rewrite of the section was felt necessary. In addition, the new sections are adopted as a new Chapter 194, §§194.1-194.11.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716181
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: August 26, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

Chapter 194. Non-Certified Radiologic Technicians

22 TAC §§194.1-194.11

The Texas State Board of Medical Examiners adopts new §§194.1-194.11, regarding non-certified radiologic technicians, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8521) and will not be republished. The new sections were contemporaneously proposed in the emergency section of the August 26, 1997, issue of the *Texas Register* (22 TexReg 8480).

The new sections outline the requirements for registration and disciplinary action relating to persons who perform radiologic procedures under the supervision of licensed physicians. The new sections are adopted to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m. The adoption is submitted with simultaneous repeal of board §193.7, regarding radiologic technologists.

No comments were received regarding adoption of the new rules.

The new sections are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716182
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 23, 1997
Proposal publication date: August 26, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part XVI. Texas Health Care Information Council

Chapter 1301. Health Care Information

Collection and Reporting of Race, Ethnicity and Patient Identifying Information; Definition of Provider

25 TAC §§1301.11, 1301.12, 1301.14-1301.19

The Texas Health Care Information Council (Council) adopts amendments to §§1301.11, 1301.12, and 1301.14-1301.19, concerning procedures hospitals must follow to report discharge data, and, in certain circumstances, to obtain exemptions from discharge data reporting requirements. Amended Sections 1301.11, 1301.16, 1301.18 and 1301.19 are adopted with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9427). Amended §§1301.12, 1301.14, 1301.15 and 1301.17 are adopted without changes and will not be republished.

The amended sections are adopted, in part, to implement the requirements of Senate Bill 802 enacted by the 75th Texas Legislature. The amended sections also clarify inconsistencies in the Council's original hospital discharge data rules published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7490). Changes in the adopted amendments respond to public comments or otherwise reflect non-substantive variations from the proposed amendments. The Council's representative from the Office of the Attorney General has advised that the changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed sections. Accordingly, republication of the adopted sections as proposed amendments is not required.

Amended §1301.11 defines the terms "Data format," "Ethnicity," "Health benefit plan," "Other exempted provider," "Race," "Risk adjustment," and "Severity adjustment," and amends the definitions of the terms "Provider," "Rural provider" and "Uniform patient identifier." The amendments to §1301.12 recognize that hospitals are to send revised bills to the Council if they have issued revised bills to payers and recognize that the Texas Department of Health (TDH) is the Council's agent in the event that the audit of hospital data is necessary. Amended §1301.14 reflects a punctuation correction and submission formatting requirements for nine track tapes. The amendments to §1301.15 clarify when hospitals who have lost their exemptions as rural providers or other exempted providers must begin reporting discharge data. The amendments to this section also allow hospitals to obtain exceptions from reporting discharge data in standard formats upon demonstrating that their alternative formats are uniformly accepted by payers or others to whom the hospitals report data for complementary purposes. The amendments to §1301.16 are non substantive and self explanatory. The amendments to §1301.17 authorize hospitals, physicians, or other health providers to submit written comments relating to services they have delivered prior to the release by the Council of public use data. Amended §1301.18 describes certain codes and identifiers to be used for the creation of the public use data file, describes the data elements in each public use data file, eliminates statistical compilation requirements, and provides for making comments relating to professional services available at the Council's offices and on its Internet site. Finally, the amendments to §1301.19 describe acceptable electronic and paper formats for submitting hospital discharge data, add patient race, ethnicity, Social Security Number, and street address to the list of required reporting, and assign sources of payment codes.

The Council conducted a public hearing on the proposed amendments in Austin, Texas, on October 9, 1997. Additionally, the Council received written comments on the proposed amendments. All comments are addressed in this preamble.

Consumer's Union expressed general support for the amendments, except as specifically noted below. The Council appreciates the comments of State Representative Glen Maxey. His comments and the Council's responses are noted in the discussions of §1301.11 "Rural provider," §1301.15(a)(4) and §1301.18.

Preamble. Costs of Compliance

One commenter stated that the total cost of compliance, to both health care institutions and to the Council, was underestimated. The commenter states that the Council's projected cost of $522,667 set out in the proposed amendments' preamble does not include the technical costs associated with collecting race, ethnicity, Social Security or reporting the source of payment codes.

This commenter suggested that their hospital would estimate technical costs for the first year at $13,000 to $15,000 (64,000 discharges per year calculates to approximately 20-23 cents per discharge) with subsequent yearly costs of $4,000 to $5,000 (6-8 cents per discharge). The commenter assumed that if each of 330 hospitals spend equal amounts for technical costs the estimated costs for all the hospitals would be at least $4.29 million for the first year and $1.32 million for subsequent years. The Council disagrees with this comment. While the commenter's technical cost of 20-23 cents per discharge may be reasonable, the projected cost of $4.29 million for 330 Texas hospitals is not. For the cost to reach this figure, the 330 Texas hospitals would need 21,120,000 discharges. This figure is approximately 9.4 times the number of Texas discharges in 1995, according to the statistics of the American Hospital Association. The Council is aware that the number of discharges has been decreasing annually for the past several years. Accordingly, it is reasonable to assume that the total discharges in the first year of the amendments will be less than 2.24 million. If we assume 2.24 million discharges at a cost of 23 cents per discharge, the total technical costs for the first year could not exceed $515,200. If these technical costs are added to the $522,667 annual compliance costs determined by the Council in the preamble to the proposed amendments, the total compliance cost to hospitals should not exceed $1,037,867 in the first year and $701,867 ($522,667 + (8 cents times 2.24 million discharges)) in the second through fifth years.

This commenter suggested that the Council significantly underestimated the costs the Council would incur to implement and maintain the data collection system and noted that it expects the Council to reimburse it for its actual costs in submitting data to the Council, pursuant to the Texas Health & Safety Code, §241.154. The Council disagrees. The Council lacks statutory authority to reimburse hospitals for their costs of providing records.

One commenter suggested that the Council could defray some of the projected costs, by allowing those hospitals with the resources and ability to do so, to submit their discharge data in a "clean" format. The Council believes that all hospitals who are required to submit discharge data should furnish identical data to the Council.

Memorial Hospital System commented against the Preamble's cost projections.

§1301.11. Definitions.

Race and Ethnicity

One commenter requested that the rules not require hospitals to furnish ethnicity information if the patients neither furnished the information nor were required to furnish it by law. This commenter also objected to singling out a single ethnic class–Hispanic. The Council disagrees. Texas Health & Safety Code, §108.009(k) requires the Council to collect health care data elements relating to the racial and ethnic background of patients. The Council believes that the classification of Texas patients according to their status relative to a Hispanic background is a reasonable one and notes that the United States Department of Commerce, Bureau of the Census classifies Hispanic origin as the single ethnic category. The 1990 Census lists Texas as having 4,339,905 persons of Hispanic origin out of 16,986,510 people, roughly 25.5% of the Texas population.

One commenter recommended expanding the patient race and ethnicity categories to include Hispanic because Hispanic people would not be appropriately identified. The Council disagrees. The US Department of Commerce, Bureau of the Census classifies Hispanic origin as a distinct category. The 1990 Census of Texas has people of Hispanic origin subcategorized by race:

White - 2,483,082

Black - 45,272

American Indian, Eskimo or Aleut - 13,074

Asian or Pacific Islander - 15,634

Other race - 1,782,843

Another commenter suggested that collecting ethnicity would cause the hospital to program in an additional field to all their registration screens. The Council agrees this may occur with some hospital systems but notes that the Council is required by statute to collect race and ethnicity data. One commenter recommended that the Council delete ethnicity as a required data element. The Council disagrees. The Council is required to collect the race and ethnic background of patients. The Council understands that collecting the additional data elements creates additional expenses -programming of computer systems, additional time (data collection and entry) and personnel- upon the hospitals. The Council chose formats and media that were currently in use by the Medicare and Medicaid programs (roughly 55% of the claims).

One commenter recommended that race and ethnicity be included only in a research file or suppressed in the public use file to have a low incidence level to protect patient confidentiality. The Council disagrees. Other sections of these rules adequately protect patient confidentiality. For example, §1301.18 requires the deletion of patient identifying information before releasing the public use data file.

One commenter currently reports patient race and ethnicity as follows: A = Asian, B = Black, H = Hispanic, I = American Indian, W = White, 0 = Other. Changing to another code list would be a massive and costly undertaking which could delay their ability to report as scheduled. The Council agrees that changing to another code list may be costly. Senate Bill 802 requires the Council to collect race and ethnic background on patients. The Council is unable to design categories that will be the least costly to all hospitals. The Council has chosen a list that closely resembles the United States Department of Commerce, Bureau of the Census, coding system. The system chosen by the Council is also used in California. The Council believes that overall the race and ethnicity categories it has chosen will provide useful data at a reasonable cost of compliance.

The following entities commented against this amendment: The Texas Department of Mental Health and Mental Retardation, Brazosport Memorial Hospital, Memorial Healthcare System and Dallas-Fort Worth Hospital Council.

Rural Provider

Three commenters requested a clarification of the definition for "rural provider." The Council agrees. The definition as proposed omitted several words where used in Senate Bill 802. The Council has also added language to track the statute's definition.

The Texas Hospital Association, Gonzales County Hospital District and Representative Maxey commented against the definition as proposed.

Risk Adjustment and Severity Adjustment

One commenter stated that the rules fail to identify a specific mechanism and/or algorithm that will be used by the Council to calculate risk adjustment or severity adjustment. The Council is unaware of a statutory requirement that this information is to be included in the rules.

The commenter stated that the rules do not state whether the calculation will be performed by the Council or by the submitting facility. The Council disagrees. Section 1301.18(c) states that risk and severity adjustment scores utilizing an algorithm approved by the Council shall be added. The Executive Director or the Director's agent shall perform the calculation.

The commenter stated that the rules fail to identify the submitted information in the discharge data that is submitted to the Council and which information upon which the calculations for risk and severity adjustment are to be based. The Council is unaware of a statutory requirement that this information is to be included in the rules.

Memorial Hospital System commented against the proposed amendment.

Inpatient

One commenter recommended that skilled nursing facility (SNF) units in acute care hospitals should not be required to report hospital discharge data – unless free standing SNF's are required to report to the Council. The Council disagrees with the commenter. Legislation is necessary to require free standing SNF's to report to the Council.

Methodist Hospital commented against this amendment.

§1301.12. Collection of Hospital Discharge Data.

One hospital commented that the Council lacks authority to collect patient names and patient-identifying information. This commenter expresses the view that had the Legislature intended to for the Council to collect patient names and other patient-identifying information, the Legislature would have specifically identified such a requirement in the law. The hospital noted that health care information which identifies patients is protected from disclosure "to any person...without the written consent of the patient..." (Citing Texas Health & Safety Code Annotated, §241.152(a) West 1997, as amended by Senate Bill 975). The Council disagrees. Health & Safety Code Annotated, §241.153(9) authorizes hospitals to release patient health care information to state agencies without the patient's consent "to the extent authorized or required by law." The Council further notes that under §108.013(b) of its enabling legislation, the Council is to develop "uniform patient identifiers." Patient identifying information is needed by the Council for it to develop these unique numbers. Additionally §108.013(c)(1), (d), (e), and (g) protect the confidentiality of patient identifying information in the Council's possession. If the legislature had not contemplated that the Council would come into possession of patient identifying information, then no need would have existed for the legislature to protect the information from disclosure by the Council.

This hospital also noted that the Council has not presented any reason that substantiates the inclusion of patient identifying information. The Council responds as follows: (1) The Council is charged with the responsibility of developing uniform patient identifier numbers. Patient identifying information is needed to develop the identifiers. (2) Patient identifying information is needed to track subsequent hospital admissions for related conditions. (3) The possibility exists that a hospital might submit altered data if allowed to mask data in some fashion. In this connection the Council notes that §108.007 of the Council's enabling legislation authorizes the Council, through the Department of Health, to inspect documents and records and to compel providers to provide accurate documents and records. The Council believes that the furnishing of patient identifying information is one safeguard, along with others set out in its rules, for assuring the receipt of unaltered data.

Three commenters also commented that 42 United States Code, §290dd-2(a) prohibits hospitals from releasing records of substance abuse patients to the Council. The Council disagrees. The Council is obligated by §108.006(9)(D) of its enabling legislation to furnish reports to the governor, the legislature and the public on "the quality and effectiveness of health care and access to health care for all citizens of this state." If the Council is unable to collect information regarding substance abuse patients, it will be unable to comply with its statutory obligation noted above. Additionally, on May 16, 1997 the Council , through its then acting Executive Director, Jim Loyd, requested clarification of the impact of the federal law, 42 United States Code 290dd-2, and the federal confidentiality regulations, 42 Code of Federal Regulations (CFR) Part 2, on the Texas effort to collect comprehensive hospital discharge data. On June 25, 1997, Mr. David Mactas, Director , Center for Substance Abuse Treatment, United State Department of Health & Human Services wrote the Council and advised that if the State is collecting the data for "research or evaluation" purposes, "patient identifying information" may be disclosed. Mr. Mactas enclosed a written opinion dated in 1995 from Karen S. Wagner, Senior Attorney, Office of the General Counsel, Office of the Secretary, for the United States Department of Health and Human Services, to Mr. John Bryant, Acting Assistant Secretary for Alcohol, Drug Abuse and Mental Health, Florida Department of Health and Rehabilitative Services, which concluded that substance abuse programs may report patient social security numbers to the State of Florida, under the "audit and evaluation" exception of 42 CFR §2.52. The Council concludes that its statutory authority under §108.007 of its enabling legislation to inspect documents and records and to compel providers to provide accurate documents and records bring the State of Texas under the "audit and evaluation" exception as well. Accordingly Texas programs may submit patient identifying information for substance abuse treatment without risk of violating federal law.

One commenter suggested that the hospitals should have the option of submitting a single discharge file, irrespective of the number of interim bills submitted, to reduce the cost and complexity of data submission. The Council disagrees and believes that the submission of all patient bills is a reasonable safeguard to insure data integrity. The Council will consolidate the interim, revised and final bills and create a single consolidated discharge file for the reporting quarter.

One commenter suggested that the Council should consider alternatives to the collection of patient identifiers such as Social Security Number, name, and street address. The commenter recommended encryption of patient identifiers prior to the submission of the data to the Council. The encryption software would have to be standardized and should be furnished to providers by the Council. The Council believes that its enabling legislation contains adequate safeguards to protect the confidentiality of patient identifying information. Further, the Council lacks sufficient funding to purchase the encryption software for all hospitals.

One commenter requested that the Council clarify hospital and provider liability, specific to breaches of patient confidentiality and data security which occur after hospitals furnish data to the Council. The Council is unable to address this issue which is not specific to the proposed amendments.

One commenter recommended that the uniform patient identifier not be included in the Public Use Data file because of the potential linking, misuse, and possible loss of patient confidentiality. The Council notes that §108.002 of the Council's enabling legislation defines "Public Use Data" and requires that patients be identified by use of uniform patient identifiers.

One commenter suggested a grammatical change to clarify whether or not the Department of Health is the agent of Council in collecting and verifying the accuracy of data. The Department of Health will be acting as the Council's agent in the process, and the amendment as proposed makes this relationship clear.

The Texas Hospital Association, Memorial Healthcare Systems, Methodist Hospital, and the Dallas-Fort Worth Hospital Council commented against this section. Consumers' Union also commented on this section: Its comment is best characterized as neither for nor against but as seeking clarification.

No comments were received regarding adoption of §1301.14

§1301.15. Exemptions from Filing requirements.

Several commenters supported and recommended the adoption of §1301.15(a)(4) citing that it recognizes the legislative intent of §108.009(h) in Senate Bill 802 of the 75th Texas Legislature. The Council agrees with the commenters and believes that the

proposed amendment implements legislative intent in accepting universally accepted electronic formats. The Council recognizes the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) and ANSI X.12 form 837 as the only two universally accepted electronic formats. The Council reminds the hospitals that §1301.12(c) requires all hospitals to file electronically, unless they receive an exemption from the Council.

One commenter supports the language in §1301.15(a)(4) mandating hospitals submitting discharge reports to submit the same required data elements as those submitting electronically, so as to obtain a full picture of health care needs in Texas. The Council recognizes the need to obtain the same data elements from all providers regardless of the format or media of submission.

One commenter sought clarification regarding the time of filing initial discharge reports when hospitals lose their exemption from filing. The initial discharge report will be due 90 days after the Hospital receives notice from the executive director that the exemption has been lost.

The following entities or organizations commented for the proposed amendment: Texas Conference of Catholic Health Facilities, Dallas-Fort Worth Hospital Council, The Texas Hospital Association and Consumers' Union.

§1301.16 Acceptance of Discharge Reports and Correction of Errors.

One commenter wanted clarification as to how discharge reports that require correction would be returned to the provider. The Council agrees with the commenter and has added language to §1301.16(b) providing that the executive director shall return the rejected discharge report in the same approved format and media that the discharge report were originally submitted to the Council.

Methodist Hospital commented on this section.

§1301.17 Certification of Discharge Reports.

One commenter acknowledged the safeguards incorporated into the September 1997 Hospital Discharge Data Rules that will prevent and/or eliminate the submission of "bad" or "fraudulent" information in §§1301.12(b), 1301.12(g) and 1301.17(b). The Council agrees with the commenter that these sections will provide safeguards against the incidence of "bad" or "fraudulent" data.

A commenter recommended that the Council issue a certification upon the release of data to the public. The Council disagrees with the commenter because the Council is required by §108.010(c) to give the providers reasonable review and allow for comments to be added before the initial release of the provider quality data and §108.011(f) requires the Council to give the providers reasonable review and allow for comments to be added before reports that involve the provider are released to the public.

One commenter noted that the provider comments section specified in §1301.17(e) contained no length limitation and the impact of comments could be significant on computer disk space. The Council is aware that §108.010(e) and §108.011(e) of its enabling legislation authorize it to adopt rules providing for "concise written comments." The Council chooses at this time, however, not to place length limitations on the comments. If experience shows that the comments are unduly lengthy or that they tend to negatively impact the value of the provider quality or public use data, the Council will consider placing reasonable length limitations in its rules at a later date.

One commenter welcomed the additional opportunity to respond to the data and submit comments prior to public release. The commenter stated that hospitals favor including severity scores, risk scores and teaching hospital identifiers. The Council has not determined how the data will be presented back to the providers for comment or whether severity scores, risk scores and teaching hospital identifiers will be attached.

The Dallas-Fort Worth Hospital Council commented in favor of this section. Memorial Healthcare Systems commented for this section as it relates to providing safeguards against the submission of bad data.

Memorial commented against this section regarding the lack of limitations on comment length. Methodist Hospital commented against this section.

§1301.18. Hospital Discharge Data Release.

A commenter stated that the creation of codes of geographic regions, payers and providers for the public use tape may limit access unless the Council provides a key to the codes. The Council agrees and has added language in §1301.18(b)(2), (3), and (4), respectively, to indicate that zip codes, payer codes and facility identifiers shall be included with each public release.

One commenter stated that the Council has not yet identified the computer hardware, software, or the security system that it will use to maintain the hospital discharge data database. Neither has the Council determined whether it will maintain one large data base, with public access being limited to one portion of it, or whether there will be two data bases, with public access limited to the data base modified by the Council pursuant to §1301.18(c). The Council agrees that the these systems are not established. The Council is deliberating the question and receiving bids for the data warehouse operation.

A commenter suggested that making data available on the Internet increases the risk of intentional or inadvertent release of patients' confidential information. The Council agrees and is establishing measures to protect patient confidentiality. Sections 108.011(g) and 108.010(e) of the Council's enabling legislation require the Council to utilize the Internet.

Several commenters expressed concern about breaching patient confidentiality of Psychiatric and Substance Abuse patients, citing that the Council's records are "public record" and indicating patients that were treated in psychiatric or substance abuse hospitals would be in violation of federal statutes. The Council is unaware of a confidentiality statute that prevents providers from furnishing psychiatric records to the Council. The Council disagrees. The Council is obligated by §108.006(9)(D) of its enabling legislation to furnish reports to the governor, the legislature and the public on "the quality and effectiveness of health care and access to health care for all citizens of this state." If the Council is unable to collect information regarding substance abuse patients, it will be unable to comply with its statutory obligation noted above. Additionally, on May 16, 1997 the Council , through its then acting Executive Director, Jim Loyd, requested clarification of the impact of the federal law, 42 United States Code 290dd-2, and the federal confidentiality regulations, 42 CFR Part 2, on the Texas effort to collect comprehensive hospital discharge data. On June 25, 1997, Mr. David Mactas, Director , Center for Substance Abuse Treatment, United State Department of Health & Human Ser-

vices wrote the Council and advised that if the State is collecting the data for "research or evaluation" purposes, "patient identifying information" may be disclosed. Mr. Mactas enclosed a written opinion dated in 1995 from Karen S. Wagner, Senior Attorney, Office of the General Counsel, Office of the Secretary, for the United States Department of Health and Human Services, to Mr. John Bryant, Acting Assistant Secretary for Alcohol, Drug Abuse and Mental Health, Florida Department of Health and Rehabilitative Services, which concluded that substance abuse programs may report patient social security numbers to the State of Florida, under the "audit and evaluation" exception of 42 CFR §2.52. The Council concludes that its statutory authority under §108.007 of its enabling legislation to inspect documents and records and to compel providers to provide accurate documents and records bring the State of Texas under the "audit and evaluation" exception as well. Accordingly Texas programs may submit patient identifying information for substance abuse treatment without risk of violating federal law.

A commenter suggested that the Council should address the responsibilities and the methodology for ensuring the both patient confidentiality and accuracy of data release in §1301.18. The Council released a Request for Offers for the data warehouse project on November 18 and will be receiving applications until December 15, 1997. The selection of a contractor is expected to occur January 15, 1998 with the system implemented by March 15, 1998. The Council will be able to provide a more detailed response to the responsibilities and methodologies of ensuring patient confidentiality and accuracy of the data at a later date.

Two commenters stated that the rules fail to identify a specific mechanism and/or algorithm that will be used by the Council to calculate risk adjustment or severity adjustment. One commenter recommended that the Council choose a risk and severity adjustment scoring methodology that appropriately accounts for the severity of cases that academic medical centers receive from rural and other urban hospitals and that statistical outliers be handled in an acceptable manner. The Council agrees with the commenters. The Council does not agree, however, that the specific mechanism or algorithm must be included in the rules. The rules need only to establish the methodology and review process. The Council assigned the Quality Methods and Consumer Education Technical Advisory Committee (QM&CE TAC) responsibility to recommend an appropriate risk and severity adjustment system. The QM&CE TAC recommended the 3M Corporation All Patient Refined-Diagnosis Related Grouper (APR-DRG), and the Council accepted the recommendation. The Council is making the necessary arrangements to have this product installed and utilized for public release of data.

The Council is also required by §108.010(f) of its enabling legislation to adopt a methodology for measuring quality that includes case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality. The Council plans to have the QM&CE TAC and the Health Information Systems Technical Advisory Committee (HIS TAC) address these topics and include how "outliers" will be handled.

One commenter suggested that the Council consider alternative ways (that ensure patient confidentiality) of reporting the geographic identifier of individual patients. The commenter stated that the method mandated by the legislature of aggregating individual patient zip code severely limits the consumer's ability to do market share research, utilization studies and strategic planning. The Council notes that this subject is a matter for the legislature.

One commenter recommended that the date for release of information to the public be adjusted, to ensure the credibility of the Council's database. The Council notes that the date for public release was chosen by the Council when the original hospital discharge data rules were adopted on July 29, 1997. The date is not a subject of these proposed amendments.

One commenter suggested that the Executive Director should delete Social Security Number along with the Patient's and Insured Name, address and certificate data elements (for example: patient control number and medical record number) from the public use data file. The Council agrees with the commenter and has added language to §1301.18(c)(1) to delete Social Security Number in order to protect patient confidentiality.

A commenter recommended that codes for identifying geographic regions, providers, and payers be attached to the public use data information. The Council agrees with the commenter and has added language to §§1301.18(b)(2), 1301.18(b)(3), and 1301.18(b)(4) to ensure that geographic regions, providers and payers are able to be identified.

Two commenters opposed the deletion of the reference to the term "statistical compilations" in §1301.18(g), stating that its inclusion does not obligate the Council to additional requirements. The Council responds that it does not wish to portray to the public the ability to perform statistical compilations not required by statute. The Council at the present time has neither the funding nor the staff to perform these compilations.

A commenter expressed concern that the Council was attempting through these amendments to make matters confidential in the public use data file that were not declared to be confidential in the Council's enabling legislation. The Council responds that only matters declared confidential by statute will be treated as confidential in the public use data file.

A commenter noted clerical errors in the lettering and numbering of the subsections following subsection (d) in §1301.18. The Council agrees. The amended section corrects the errors.

Consumers' Union, Dallas-Fort Worth Hospital Council, Memorial Hospital System, Methodist Hospital, and one individual commented against this section.

§1301.19. Discharge Reports - Records, Data Fields and Codes.

Three commenters recommended that a coding system be used to identify the reason a patient does not have a Social Security Number. The Council agrees with the commenters and has added language and a coding system to reduce space needed for comments and to allow ease of data submission and analysis. The Council is including these acceptable codes: F = Foreign National, N = Newborn, O = Other, R = Patient refused to answer or respond. These codes will be placed in Form Locator 2 on the HCFA 1450 paper format and in Record Type 22, Field 6, Beginning Position 56 for the UB-92 Electronic Format (Version 004.1 or 004.0).

One commenter suggested that the patients should be the only ones to answer the question about their race and ethnic background; another commenter wanted to know whether the hospital staff must ask the patient verbally about their race and ethnicity or could they request the information by having the patient fill out a questionnaire. The amended section as

adopted allows hospitals to choose either method. If the patient is unresponsive or chooses not to give an answer, the hospital staff should use its best judgement. For example, if there is a high degree of confidence regarding race and ethnicity then staff should record its estimate; if there is a low degree of confidence, the field should be left blank.

One commenter recommended that the rules should recognize a primary and secondary payment source. The Council agrees but refrains from making the change in the adopted amendment because counsel has advised that the change is a substantive one requiring notice to affected entities. The Council will consider the proposal of an amended rule at a later date. The same commenter also recommended that the category "Charity/ Self Pay" should be two distinct categories. The Council agrees with this comment and has created two separate categories for reporting this data. The code will be "Z" for Charity pay. Nonstandard codes will be reported in Record 22, Field 9, Position 111.

The Council has changed all references to 22 in the Record Type in the adopted amendment. The adopted amendment also directs the line placement for paper submissions. These changes are not in response to comments.

A commenter suggested that the Council is collecting data that duplicates the information collected by other state agencies and the Joint Commission on Accreditation of Healthcare Organization (JCAHO). The commenter stated that the Council is prohibited by §108.006(a)(4) of the Council's enabling legislation from duplicating other data collection required by state or federal law, by an accreditation organization, or by board rule. The Council disagrees that the data to be reported to it duplicates existing data collection efforts. The currently recognized collection efforts do not provide all information that the Council is mandated to collect and report on: For example, Hospitals submit aggregated data to the JCAHO ORYX database. Each hospital is allowed to choose one of ninety-nine (JCAHO) approved systems on which to submit the data. Therefore, while some data may be duplicative, all essential elements would not. Race and ethnicity elements required to be collected by Senate Bill 802 would not necessarily be reported to JCAHO. Also, the data would not allow for assigning uniform patient or physician identifiers, tracking patients between hospitals, or making valid comparative information available to the Legislature, Governor or the Public unless all the hospitals chose the same system to report to JCAHO. Additionally, the Council disagrees with the commenters interpretation of §108.006(a)(4). The Council is unaware of any other collection efforts required by federal or state law, by an accreditation organization, or by Board rule that duplicates the Council's data collection undertaking. Accordingly, the Council believes that its program builds on and does not duplicate other data collection programs.

The aforementioned commenter also stated that the hospitals are required to submit the amount of charity care information from each facility to the State of Texas and this would be duplication of data submission. Hospitals are required to submit the amount of charity care to the Texas Department of Health. This information is aggregated data and contains collective charges for each facility. The data submitted does not include many essential data elements, including number of cases, diagnoses, treatment procedures, and length of stay that are required to fulfil the Legislative mandates of the Council's enabling legislation. Therefore, the Council disagrees with the commenter.

Two commenters recommended that the Council delete all patient identifying information from §1301.19(e). The Council disagrees and believes that collecting patient identifying information is necessary for creating a uniform identifier as required by the definition of "Public Use Data" in §108.002(14) and for compliance with §108.009(l)(5) of the Council's enabling legislation to identify individuals and populations at risk. Finally, this patient identifying information is necessary to track subsequent hospitalizations for related or identical conditions.

Memorial Healthcare System, Dallas-Fort Worth Hospital Council, and Methodist Hospital, Baylor Health Care System, and the Texas Hospital Association, commented against this section.

The effective date is 90 days after the date hereof, December 2, 1997.

The amendments are adopted under the Health and Safety Code, §108.006(a), §108.009, and §108.010. The Council interprets §108.006(a) as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data collection requirements and rules to obtain exemptions from data reporting requirements, and to prescribe by rule the process for providers to submit data. The Council interprets §108.009 as authorizing it to adopt rules for collecting data elements relating to payer types, and patient race and ethnicity. The Council interprets §108. 010 as authorizing it to make provider comments relating to provider quality available at its offices and on the Internet. The Council also interprets §108.010 as directing it to release provider quality information on certain providers in aggregate form with uniform patient and physician identifiers.

§1301.11. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Data format - The sequence or location of data elements on a paper form or electronic record according to prescribed specifications.

Ethnicity - The status of patients relative to Hispanic background.

Health benefit plan - A plan provided by a health maintenance organization or an approved nonprofit health corporation certified under the Medical Practice Act, §5.01(a) that holds a certificate of authority issued by the Commissioner of Insurance under Article 21.52F of the Insurance Code.

Other exempted provider - A hospital exempt from state franchise, sales, ad valorem, or other state and local taxes that does not seek or receive reimbursement for providing health care services to patients from any source, including the patient or any person legally obligated to support the patient; a third party payer; or Medicaid, Medicare, or any other federal, state or local program for indigent health care.

Provider - A physician or health care facility.

Race - A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Hospitals shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

Risk adjustment - A statistical method to account for a patient's severity of illness at the time of admission and the likelihood of development of a disease or outcome, prior to any medical intervention.

Rural provider - A health care facility located in a county with a population of not more than 35,000 as of July 1 of the most recent year according to the most recent United States Bureau of the Census estimate; or located in a county with a population of more than 35,000 but with 100 or fewer licensed hospital beds and not located in an area that is delineated as an urbanized area by the United States Bureau of the Census; and is not state owned, or not managed or directly or indirectly owned by an individual, association, partnership, corporation, or other legal entity that owns or manages one or more other hospitals. A health care facility is not a rural provider if an individual or legal entity that manages or owns one or more other hospitals owns or controls more than 50% of the voting rights with respect to the governance of the facility.

Severity adjustment - A method to stratify patient groups by degrees of illness and mortality.

Uniform patient identifier - A unique number assigned by the Council to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals and inpatient admissions. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

§1301.16. Acceptance of Discharge Reports and Correction of Errors.

(a) (No change.)

(b) Upon receipt of a discharge report, the executive director shall determine if it satisfies minimum criteria for processing. If it does not, the executive director shall return the discharge report in the same submission format and media that is approved for that provider and state the deficiencies in writing within ten days of receipt. The hospital shall resubmit the report within ten days of notification by the executive director. A discharge report does not meet minimum standards for processing under the following circumstances as shown in paragraphs (1)-(3) of this subsection.

(1)-(2) (No change.)

(3) The file structure does not conform to the specifications in §1301.19 of this title (relating to Discharge Reports - Records, Data Fields and Codes), unless the hospital has received a letter from the Council authorizing filing in another format.

(c)-(e) (No change.)

§1301.18. Hospital Discharge Data Release.

(a) (No change.)

(b) Creation of codes and identifiers. The executive director shall develop the following codes and identifiers, as listed in paragraphs (1)-(4) of this subsection, required for creation of the public use data file and for other purposes.

(1) The executive director shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) The executive director shall create a process for assigning geographic identifiers to each discharge record. Each geographic identifier shall be composed of two or more postal five digit zip codes. The identity of the zip codes included in each geographic identifier is public information. The zip codes for each geographic region shall be included with each public release of this information.

(3) The executive director shall create a process for assigning uniform payer identifiers to each discharge record. The identity of the payer associated with each payer identifier is public information. The executive director shall also create codes designating primary source of payment. The payer codes shall be included with each public release of this information.

(4) The executive director shall create a process for assigning a uniform facility identifier to each health care facility and other provider submitting data. The identity of the health care facility or other provider associated with each facility identifier is public information. These facility identifier shall be included with each public release of this information.

(c) Creation of public use data file. The executive director will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1)-(12) of this subsection:

(1) delete patient, and insured name, Social Security Number, address and certificate data elements, if submitted; delete patient control and medical record numbers. Assign uniform identifiers and county codes;

(2) convert patient birth date to age;

(3) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(4) convert procedure and occurrence dates to day of stay values;

(5) delete physician and other health professional names and numbers: assign uniform identifiers;

(6) convert payer names and identification numbers to uniform payer identifiers: assign codes indicating the primary source of payment;

(7) convert employer name and address data to a Standard Industrial Classification Code;

(8) convert facility name, address and identification numbers to a facility identifier;

(9) convert all procedure codes to ICD-9-CM;

(10) add risk and severity adjustment scores utilizing an algorithm approved by the Council;

(11) add indicators of whether the hospital is a children's specialty hospital and whether the hospital is a teaching hospital;

(12) add indicators of whether the patient was served in an acute care unit or in a specialty unit such as skilled nursing, long-term care, or psychiatric.

(d) Release of public use data files The Council shall release in an aggregate form without uniform patient, physician or other health professional identifiers public use data relating to hospitals described by the Health and Safety Code, §108.0025(1) that are not rural providers because they do not meet the requirements of §108.0025(2).

(e) The executive director will make available a public use data file on magnetic media for each quarter not later than seven months after the end of the quarter.

(1) The executive director shall release public use data from hospitals that have certified the data as required by §1301.17 of

this title (relating to Certification of Discharge Reports). A hospital's failure to execute the certification form after six months shall not prevent the executive director from releasing the hospital's data if the director believes the data submitted is reasonably accurate and complete. The executive director shall not include in the public use data file records derived from hospital discharge files which contain material errors. The executive director will include with the public use data file information on the number of discharge files received from each hospital and the number of discharge files from each hospital included on the public use data file.

(2) If additional discharge files become available after the initial release of the public use data file for any quarter, the executive director will add these records to the public use data file and make the additional records available to the public.

(3) The other sections of these rules not withstanding, the executive director shall not create a public use data file from the discharge reports covering discharges occurring in the first quarter of 1998. It is the intent of the Council to utilize this data only for testing and calibration of its data processing systems and to allow hospitals the opportunity to test and calibrate their own data reporting systems.

(4) The other sections of these rules not withstanding, the executive director shall not create or release a public use data file from discharge reports covering discharges for the second quarter of 1998 until a public use data file covering discharges for the third quarter of 1998 is created and released. The Council will initially release six months of data in order to provide a more reliable body of data for analysis and decision-making and to make available public use data files on a quarterly schedule thereafter.

(f) The Council shall not charge Texas state agencies a fee for data requested solely for the internal use of the agency to comply with Health and Safety Code, §108.012(b). Prior to filling the request of a state agency without fee, the executive director shall secure an interagency agreement imposing restrictions on distribution, republication or reuse of the data in ways that would diminish user fees to the Council.

(g) The executive director shall establish procedures for screening all requests to assure that filling the request will not violate the provisions of Health and Safety Code, §108.013(c).

(h) The data elements specified for discharge reports in §1301.19 of this title (relating to Discharge Reports - Records, Data Fields and Codes) do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(i) A public use data file which is specified by the requestor shall not be considered a "report issued by the Council" as referenced in Health and Safety Code, §108.011(f).

(j) Requests for data files including data on one or more providers are matters of public record and copies of all requests shall be maintained by the Council for two years from the date of receipt. The executive director will transmit monthly a summary of all requests received to all hospitals submitting discharge data to comply with Health and Safety Code, §108.011(e).

(k) With any public use data file prepared by the Council, the executive director shall attach all comments submitted by providers which relate to any data included in the file. The Council shall also make these comments available at the Council's offices and on the Council's Internet site.

§1301.19. Discharge Reports - Records, Data Fields and Codes.

(a) Hospitals that have not obtained an exemption letter authorized by §1301.15 of this title (relating to Exemptions from Filing) shall submit discharge reports in one of the following formats as listed in paragraphs (1)-(3) of this subsection:

(1) electronically in the national standard flat file format for inpatient hospital bills defined by the United States Department of Health and Human Services, Health Care Finance Administration (HCFA), commonly known as the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0). HCFA updates this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or in the immediately preceding version. At the effective date of these rules, the latest version was version 004.1 and the immediately preceding version was version 004.0. The Council will make detailed specifications for these formats available to submitters and to the public for the cost of reproduction;

(2) electronically in the file format for inpatient hospital bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI X.12 form 837. ANSI updates this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or in the immediately preceding version. As of October 1, 1997, the latest version will be version 30.70 and the immediately preceding version will be version 30.51. The Council will make detailed specifications for these formats available to submitters at no charge and to the public for the cost of reproduction;

(3) for paper filing, the UB-92 paper form currently approved by the Health Care Finance Administration, also known as the HCFA 1450 paper version.

(b) (No change.)

(c) In addition to the data elements contained in the Texas UB-92 Manual, the Council has defined the following data elements shown in this subsection and has defined the location in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) where each element is to be reported.

(1) Patient race - This data element shall be reported at Record Type 22, Field 7, Beginning Position 86; Form Locator 11 (upper line) as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/Aleut, 2 = Asian or Pacific Islander, 3 = Black, 4 = White and 5 = Other. In order to obtain this data, the hospital staff is to ask the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Record Type 22, Field 8, Beginning Position 98; Form Locator 11 (lower line) as a numeric value. Acceptable codes are 1 = Hispanic Origin and 2 = Not of Hispanic Origin. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(3) Patient Social Security Number - This data element shall be reported at Record Type 22, Field 5, Beginning Position 27; Form Locator 2 (upper line) a numeric value. In the event the patient is a newborn or child of United States citizenship for whom a Social Security Number has not been assigned, the hospital shall leave the field blank and shall indicate a response code in the Record Type 22, Field 6, Beginning Position 56; Form Locator 2 (lower line) as to the reason no Social Security Number was submitted. Acceptable codes are:

F = Foreign national, does not have a Social Security Number

N = Newborn or Infant of United States citizenship for whom a Social Security Number has not been assigned
O = Other
R = Refused to provide a social security number

(4) Source of payment code - This data element shall be reported at Record 30, Field 04, Beginning Position 25 as an alphanumeric value.

(A) Acceptable codes are:

(i) A = Self pay

(ii) B = Workers' Compensation

(iii) C = Medicare

(iv) D = Medicaid

(v) E = Other Federal Programs (includes Veterans Administration)

(vi) F = Commercial

(vii) G = Blue Cross

(viii) H = Champus

(ix) I = Other

(B) Non-Standard Codes shall be reported at the Alternate Code Site Record 22, Field 9, Position 111

(i) T = State or Local Government Programs

(ii) U = Commercial PPO

(iii) V = Medicare Managed Care

(iv) X = Medicaid Managed Care

(v) Y = Commercial HMO

(vi) Z = Charity

(5) Submission purpose code - This data element shall be reported at Record 01, Field 20.8, Beginning Position 183 as an alphanumeric value. Acceptable codes are C = Claim, D = Discharge Statement, and B = Both. This code is required if a hospital bill clearinghouse is utilized in the data collection effort. Once published these codes and formats may not be changed without 90 days prior notice to hospitals required to submit discharge reports to the Council.

(d) (No change.)

(e) Hospitals shall submit the required minimum data set for all patients for which a discharge file is required by this title. For patients with any form of insurance, hospitals shall submit to the Council all data elements submitted to any third party payer in addition to data elements in the required minimum data set. The required minimum data set includes the following data elements as listed in paragraphs (1)-(44) of this subsection:

(1) Patient race;

(2) Patient ethnicity;

(3) Patient Social Security Number;

(4) Patient control number;

(5) Patient last name;

(6) Patient first name;

(7) Patient middle initial;

(8) Patient sex;

(9) Patient birth date;

(10) Type of admission;

(11) Source of admission;

(12) Source of Payment Code;

(13) Patient address;

(14) Patient city;

(15) Patient state;

(16) Patient zip;

(17) Admission/start of care date;

(18) Statement covers period from;

(19) Statement covers period through;

(20) Patient status;

(21) Medical record number;

(22) Type of bill;

(23) Accommodations revenue codes (all applicable);

(24) Accommodations rates (all applicable);

(25) Accommodation days (all applicable);

(26) Accommodation total charges (all applicable);

(27) Inpatient ancillary revenue code (all applicable);

(28) Units of service (all applicable);

(29) Ancillary charges total (all applicable);

(30) Principal diagnosis code;

(31) Other diagnosis codes (all applicable);

(32) Principal surgical procedure code (if applicable);

(33) Principal surgical procedure date (if applicable);

(34) Other surgical procedure codes (all applicable);

(35) Other surgical procedure dates (all applicable);

(36) Admitting diagnosis;

(37) External cause of injury (if applicable);

(38) Procedure coding method used;

(39) Attending physician number;

(40) Operating or other physician number (if applicable);

(41) Other physician number (all applicable);

(42) Attending physician name;

(43) Operating or other physician name (if applicable);

(44) Other physician name (all applicable);

(f) A submission will consist of a set of the following types of records from the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) specification as shown in paragraphs (1)-(13) of this subsection.

(1)-(3) (No change.)

(4) Third Party Payer Data (Record 30). The third party payer record identifies the insurance information for each payer. If the patient has other insurance, two or more records must be submitted, one for each carrier. If the patient has no third party payer, submit

one Record 30 with Field 04 = A. Records must be in the correct payer priority sequence. The '01' Record determines which source payment code will be considered as primary.

(5)-(13) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716390
Jim Loyd
Executive Director
Texas Health Care Information Council
Effective date: December 29, 1997
Proposal publication date: September 19, 1997
For further information, please call: (512) 424-6490

♦ ♦ ♦

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter S. Minimum Standards and Benefits and Readability for Individual Accident and Health Insurance Policies

28 TAC §§3.3001, 3.3002, 3.3018–3.3020, 3.3038, 3.3039, 3.3050, 3.3052, 3.3054, 3.3057, 3.3061, 3.3070–3.3074, 3.3079, 3.3081, 3.3092, 3.3110

The Commissioner of Insurance adopts amendments to Chapter 3, Subchapter S, §§3.3001, 3.3002, 3.3018-3.3020, 3.3039, 3.3050, 3.3052, 3.3054, 3.3057, 3.3061, 3.3070-3.3074, 3.3079, 3.3081, 3.3092 and 3.3110, and the addition of new §3.3038. These amendments relate to standards, benefits and readability for individual accident and health insurance policies. Sections 3.3018, 3.3019, 3.3020, 3.3038, 3.3050, 3.3052 and 3.3092 are adopted with changes to the proposed text as published in the August 29, 1997 issue of the *Texas Register* (22 TexReg 8584). Sections 3.3001, 3.3002, 3.3039, 3.3054, 3.3057, 3.3061, 3.3070-3.3074, 3.3079, 3.3081 and 3.3110 are adopted without changes and will not be republished. The commissioner also adopts the repeal of §3.3078 (relating to Minimum Standards for Medicare Supplement Expense Coverage) elsewhere in this issue of the *Texas Register*.

In House Bill 710, as passed by the 75th Legislature and signed by the governor ("HB710"), Texas adopted certain federal requirements pertaining to individual accident and health insurance policies contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and in federal rules promulgated under HIPAA. The amendments to Subchapter S are necessary to implement the requirement in HB710 and HIPAA that certain individual accident and health insurance policies be guaranteed renewable at the option of the insured, without time or age restrictions. The amendments also implement the requirement in HB710 that, under delineated circumstances based on the length, types and aggregate continuity of coverage, many individuals moving from the group to individual market will be subject either to no preexisting condition provision or to a credit of time against any applicable preexisting condition provision.

The sections, as adopted, differ in some respects from the proposed sections, based on further study generated by the comments received. Section 3.3018(b) has been modified to clarify when the 18-month look-back period for crediting coverage begins. Sections 3.3019(b), 3.3020(b)(4) and 3.3050(b)(5) have been revised to limit the time period, to on or before May 31, 1998, in which a company offering excepted benefits can continue to issue policies from stock existing before the effective date of the rules. In conformance with HIPAA and HB710, §3.3038(c) now indicates that an insurer governed by Chapter 20 of the Insurance Code may refuse to renew individual hospital, medical or surgical coverage if the insured no longer resides, lives, or works in the service area of the insurer, or the area for which the insurer is authorized to do business, but only if coverage is terminated uniformly without regard to any health status related factor of covered individuals. A corresponding change has been made to promulgated language regarding guaranteed renewability in the outline of coverage provisions in §3.3092(b)(5). A new subsection (h) has been added to §3.3038 to clarify that the section does not prohibit an insurer from making policy modifications mandated by state law or, consistently with §3.3040(b) of this title, from honoring requests from a policyholder for modifications to an individual policy or offering policy modifications uniformly to all insureds under a particular policy form. Section 3.3052 has been revised to clarify that in regards to individual hospital, medical and surgical coverage, an insurer may terminate coverage of the spouse of a primary insured upon dissolution of the marriage, or a dependent of the primary insured upon the dependent's attainment of a limiting age, subject to the any prohibitions or limitations elsewhere in §3.3052 or in other applicable law.

The amendments to §3.3001 indicate that unless otherwise specified, the rules apply to certain individual accident and sickness policies and subscriber contracts of hospital and medical and dental service associations delivered or issued for delivery or renewed in Texas after the effective date of the rules. The amendments to §3.3002 add a number of definitions for terms used in the new and amended sections implementing HB710's requirements related to guaranteed renewability and preexisting condition limitations. Two key definitions are "individual, hospital, medical and surgical coverage" and "excepted benefits," because the guaranteed renewability provisions mandated by HB710 and HIPAA, and the preexisting condition provisions mandated by HB710, only apply to individual hospital, medical and surgical coverage and such coverage is defined as all coverage subject to Subchapter S, unless such coverage consists of excepted benefits. The "excepted benefits" are accident only coverage, disability income insurance, coverage for on-site medical clinics and short term limited duration coverage, and, if the benefits are provided under a separate contract of insurance, certain coverage for dental or vision benefits, a specified disease or to supplement CHAMPUS benefits or an ERISA group health plan.

The amendments to §3.3018 state that preexisting condition provisions normally allowed in Texas cannot be applied to individual hospital, medical and surgical coverage if offered to an individual who was continuously covered for an "aggregate period" of 18 months by "creditable coverage" that was in effect up to a date not more than 63 days before the effective date

of the policy, excluding any "waiting period," and whose most recent creditable coverage was under a "group health plan, governmental plan or church plan." All of the terms in quotes are defined in the amendments to §3.3002. In regards to individual policies and insureds not falling within the above categories, insurers can continue to impose preexisting conditions. However, in accordance with HB710, the amendments to §3.3018 require that even if an insured whose most recent creditable coverage was under a group health plan, governmental plan or church plan does not qualify for exemption from a preexisting condition provision to the policy, an insurer must credit against any preexisting condition period the creditable coverage accrued by the insured at any time during the eighteen months preceding the insured's first day of coverage if there is not a waiting period, or the date of application for coverage if there is a waiting period. The amendments state that when determining to what extent preexisting condition provisions apply to an insured, the insurer must comply with required notices, disclosures and other applicable provisions of Chapter 21, Subtitle K (relating to Certification of Creditable Coverage) of this title. The amendments also provide examples of how to figure creditable coverage through application of this section.

The amendments to §3.3019 revise the policy definition of "noncancellable." Under the amendment, except in limited circumstances described in subsection (b) of the section, insurers cannot refer to a noncancellable policy–defined as a policy in which the insured has the right to continue by the timely payment of premiums at the same rate until at least age 50, or in the case of a policy issued after age 44, for at least five years–as "noncancellable and guaranteed renewable," unless the policy also meets the definition of "guaranteed renewable," as defined in §§3.3020(a) and 3.3038. Subsection (b) allows insurers to continue through May 31, 1998 to issue from printed stock existing on the day before the effective date of this subchapter policies offering excepted benefits that are noncancellable, as defined in subsection (a) of this section, and that refer to the policy as "noncancellable and guaranteed renewable," if the policies conform to the definition of the term allowed by rule before the effective date of this subchapter. The amendments to §3.3020 state that in regards to individual hospital, medical and surgical coverage, the term "guaranteed renewable" shall not be defined more restrictively than in §3.3038. Under rules in effect prior to this adoption order, "guaranteed renewable" was defined similarly to "noncancellable," except that in a policy that was guaranteed renewable, the insurer could raise rates upon renewal of the policy. Under the definition contained in new §3.3038 and required by HB710 and HIPAA, there cannot be time or age limits on an insured's right to renew individual hospital, medical and surgical coverage. In regards to excepted benefits, §3.3020 will continue to allow insurers to offer a renewability provision that terminates at age 50, or, if the policy is issued after age 44, that terminates at least five years after issuance of the policy. To avoid confusion, such a benefit must be called a "limited guarantee of renewability." However, the section allows insurers to continue through May 31, 1998 to issue from printed stock existing on the day before the effective date of this subchapter policies offering excepted benefits that contain a policy definition of "guaranteed renewable" conforming to the definition of the term allowed by rule before the effective date of this subchapter. Such previous definition of guaranteed renewable is the same as the definition of limited guarantee of renewability contained in this section. Unless the policy also is noncancellable, §3.3020 requires that the policy definitions of both "guaranteed renewable" and "limited guarantee of renewability" clearly indicate that the insurer retains the right to raise rates at the time the policy is renewed.

Section 3.3038 requires that all individual hospital, medical and surgical coverage be renewed at the option of the insured, unless: the insured fails to pay premiums, or commits fraud or intentional misrepresentation in relation to the policy; the insurer is ceasing to offer individual hospital, medical and surgical coverage either under the particular individual policy form, or under all individual policy forms in Texas, and the insurer follows the procedures required by §3.3038 as prerequisites to such termination of coverage; or, in regards to coverage issued by a company governed by the Insurance Code, Chapter 20, the insured no longer resides, lives, or works in the service area of the issuer, or the area for which the issuer is authorized to do business, provided that the coverage is terminated uniformly without regard to any health status related factor of covered individuals.

The amendments to §3.3050 change the description of a guaranteed renewable policy to comport with the changes in §3.3020 and the new definition in §3.3038, and add a description for a "limited guarantee of renewability" provision. The amendments further add "limited" at the beginning of the phrase "renewability at the option of the insured." This term describes a provision with time or age limitations that are stricter than a limited guarantee of renewability. Insurers offering excepted benefits may continue through May 31, 1998 to issue policies from printed stock existing on the day before the effective date of this subchapter that refer to this type of provision as renewable at the option of the insured. The amendments to §3.3050 also state that the various renewability provisions other than guaranteed renewable that are described in §3.3050 can apply to excepted benefits, but not to individual hospital, medical and surgical coverage. The amendments to §3.3052 state that individual hospital, medical or surgical coverage can be terminated only for the bases for termination contained in §3.3038, or, in the case of coverage of a spouse or dependent of the primary insured, when the spouse or dependent status no longer exists, provided that such termination is consistent with the section and other provisions of Texas law. The amendments to §3.3054 require policies containing individual hospital, medical and surgical coverage to clearly disclose and explain the conditions under which Texas law requires modification to a preexisting condition provision for an individual who has previous creditable coverage.

The amendments to §3.3071 state that Basic Hospital Expense Insurance, as defined in the section, must be guaranteed renewable in accordance with §§3.3020 and 3.3038, unless such insurance constitutes short-term limited duration coverage, as defined by §3.3002(b)(18). The amendments to §3.3072 state that Basic Medical-Surgical Expense Insurance, as defined in the section, must be guaranteed renewable in accordance with §§3.3020 and 3.3038, unless such insurance constitutes short-term limited duration coverage, as defined by §3.3002(b)(18). The amendments to §3.3073 state that Hospital Confinement Indemnity Coverage, as defined in the section, is not required to be guaranteed renewable, provided it falls within the definition of excepted benefits in §3.3002(b)(6). The amendments to §3.3074 state that Major Medical Expense Coverage, as defined in the section, must be guaranteed renewable in accordance with §§3.3020 and 3.3038, unless such insurance constitutes short-term limited duration coverage, as defined by §3.3002(b)(18). The amendments to §3.3079 state

that any Limited Benefit Coverage, as defined in the section, that offers limited hospital expense coverage or limited basic medical-surgical coverage must be guaranteed renewable in accordance with §§3.3020 and 3.3038 unless such insurance constitutes short-term limited duration coverage, as defined by §3.3002(b)(18). The amendments to §3.3081 state that unless any nonconventional coverage approved by the commissioner pursuant to this section constitutes an excepted benefit, such coverage must be guaranteed renewable in accordance with §§3.3020 and 3.3038.

The amendments to §3.3092 add a disclosure regarding guaranteed renewability provisions that must be included, in substantially similar form, in any outline of coverage for a policy offering individual hospital, medical or surgical coverage.

The amendments to §3.3110 change the reference to the effective date and remove obsolete language. The amendments to §3.3110 also apply the mandatory guaranteed renewability provisions of the subchapter to individual hospital, medical and surgical coverage in policies issued before the effective date of the subchapter, and deemed continuous under the Insurance Code Article 3.70-13, on the first policy anniversary after the effective date of the subchapter. Such polices already must comply with such provisions under HIPAA, because HIPAA applies its guaranteed renewability requirements to all individual, hospital medical and surgical coverage in effect after June 30, 1997. The conforming amendments are necessary to comply with HB710's charge to the commissioner to adopt rules necessary to meet the minimum requirements of federal law and regulations.

General. A commenter stated that the rules correctly interpret HB710 and the HIPAA and urged the commissioner to adopt the rules. Another commenter asserted that the department does not have authority to promulgate rules relating to Section 3.01 of HB710, amending the Insurance Code Article 3.70-1, because the section does not contain explicit rulemaking authority.

Agency Response. The Texas Department of Insurance ("department") agrees with the commenter, regarding the correct interpretation of HB710 and HIPAA. The department disagrees that it does not have rulemaking authority. Section 3.01 of HB710 adds a subdivision 4 to Article 3.70-1(H). Subsection D of Article 3.70-1 gives the commissioner authority to issue "such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article." Subsection (E) of the Article authorizes the commissioner to issue rules establishing standards for preexisting conditions. The department notes that even if the statute amended did not have explicit rulemaking authority, the department has general authority under the Insurance Code Article 1.03A to promulgate rules, if such rules implement a statute or statutes containing subject matter within the department's jurisdiction.

General. A commenter stated that the rules in this subchapter should be completely abandoned because they are out of date. The commenter said that department staff has indicated that comprehensive revisions would be made to these rules. Another commenter generally supported adoption of the rules, but stated that the concerns of the various commenters evidenced that HIPAA and the interim federal rules contained ambiguities which hopefully would be clarified by Congress or the Department of Health and Human Services in the near future. The commenter stated that the department and the commissioner should react promptly to any forthcoming revisions in federal law.

Agency Response. The department plans to propose additional revisions to this subchapter in the future. However, the department determined that it should propose rules implementing HIPAA and HB710 as quickly as possible, rather than include such implementation in any comprehensive revision that would require a much longer rulemaking process. The department agrees that these rules should be adopted. The department will evaluate any changes to federal law when they occur, and, if appropriate, propose revisions to these rules.

3.3001. A commenter questioned whether these rules would apply to coverage through an association plan that was not employer-based, because such coverage is deemed by HIPAA to be subject to HIPAA's individual, rather than group, health reforms. The commenter suggested that if these rules do not apply to such association plans, that §3.3001 explicitly exclude such plans.

Agency Response. These rules do not apply to such association plans, which have been, and remain, group coverage under Texas law. While HIPAA deems association coverage unrelated to employment to be individual coverage for the purposes of federal health reform, HIPAA does not require modification of the way states treat such coverage. The department does not believe that revising the applicability provisions is necessary, because they are clear. The department will be proposing rules in the near future regarding nonemployer-based association coverage to address HIPAA's requirements related to those plans.

3.3002. A commenter suggested that the definition of short-term limited duration coverage be revised to delete the parenthetical phrase stating that the 12-month limitation for such coverage should "(take into account any extensions that may be elected by the policyholder without the insurer's consent)." The commenter stated that this phrase is not in HIPAA's definition of short-term limited duration coverage and might be interpreted to require an insurer to extend up to a full 12 months a contract only intended to cover a much shorter time period.

Agency Response. The department disagrees. The definition is taken verbatim from the interim federal rules and is consistent with the definition in HIPAA. The parenthetical phrase does not impose any requirements on an insurer to extend short-term limited duration contracts up to 12 months or to include extension options in a short-term limited duration contract. It merely indicates that a short-term limited durational contract is one that cannot extend the coverage beyond a 12-month term, even if all extension options in the contract are exercised by the insured.

3.3018. A commenter stated that the department's proposed amendments regarding crediting periods of prior coverage against preexisting condition periods do not conform to Article 3.70-1(H)(4), as added by HB710. The commenter asserted that subsection (a) of Article 3.70-1(H)(4), which precludes application of a preexisting condition period under certain circumstances when the insured has 18 months of creditable coverage, requires insurers to credit coverage only if it is continuous, without any gap in coverage. The commenter stated that subsection (a) only allows a 63-day gap in coverage between the end of continuous creditable coverage and the effective date of the individual policy, excluding any waiting period. The commenter also stated that subsection (c) of Article 3.70-1(H)(4), which mandates that an insurer reduce a policy's

preexisting condition period by any period of creditable coverage in the 18 months preceding the effective date of coverage, requires insurers to credit only creditable coverage that was continuous up to 63 days before the effective date of coverage, excluding any waiting period for the coverage.

Agency Response. The department disagrees. Subsection (a) of Article 3.70-1(H)(4) requires insurers to count any periods of creditable coverage with no more than 63-day gaps between them for the purposes of determining whether the insured has amassed an "aggregate" of 18 months of coverage. These provisions are not required by HIPAA for companies in the individual market, but are patterned after HIPAA's requirements for carriers in the group market "for the purposes of completing the portability circle for healthy, insurable individuals." Bill Analysis, HB710, House Committee Substitute. Under HIPAA and federal rules implementing HIPAA, aggregated creditable coverage is deemed continuous if not interrupted by "significant breaks in coverage," which are defined using a 63-day time period. See §2701(c), Public Health Services Act ("PHSA"), 45 C.F.R. §146.113(b)(2). This prevents persons who are without coverage for brief periods of time because of a job change or any other reason from losing health insurance portability. Although subsection (a) is somewhat ambiguous, and how to aggregate creditable coverage is left undefined, the department believes that the rule interprets and implements the subsection correctly, based both on legislative intent and the federal provisions on which the subsection is patterned. Subsection (c) of Article 3.70-1(H)(4) also is patterned after HIPAA provisions governing group health coverage under federal law, but differs in that it explicitly does not require coverage to be continuous, without significant breaks in coverage. The subsection requires an insurer to "credit the time the individual was previously covered under creditable coverage . . . in effect at any time during the 18 months preceding the effective date of the individual coverage." This allows reduction of a preexisting condition period when the insured does not meet the requirements of subsection (a) for avoiding a preexisting condition period entirely.

3.3018(b)(2), (4)(C), (D). A commenter stated that the examples of crediting coverage erred by calculating the amount of creditable coverage to credit against any preexisting condition provision by looking back 18 months from the date of the application, rather than from the effective date of coverage.

Agency Response. The department disagrees that the examples are incorrect. The department acknowledges that subsection (c) of the Insurance Code Article 3.70-1(H)(4), as added by HB710, states that the look-back period for crediting coverage is 18 months from the effective date of coverage. However, this subsection is patterned after HIPAA's requirements for carriers in the group market "for the purposes of completing the portability circle for healthy, insurable individuals." Bill Analysis, HB710, House Committee Substitute. The department believes that the reference to "effective date" is synonymous with the term "enrollment date," as used in HIPAA. Enrollment date is defined in HIPAA as "the date of enrollment of the individual in the plan for coverage or, if earlier, the first day of the waiting period for such enrollment." §2701(b)(2) of PHSA. Coverage is credited under HIPAA by looking back from the "enrollment date," which would be the date the application is filed unless there is no waiting period. §2701(c)(2) of PHSA. The requirement in §3.3018(b)(2) and related examples that an insurer must look back 18 months from the date of application if there is a waiting period for coverage is consistent with HIPAA and the intent of HB710. Conforming the rules to the federal law upon which the state statute was patterned ensures that the 18-month look-back period will be applied consistently, and will not include waiting periods that could vary widely between insurers. Subsection (b)(2) of §3.3018 has been revised to clarify when the 18-month look-back period begins.

§§3.3019, 3.3020, 3.3050. A commenter agreed with the department's use of terminology such as "limited guarantee of renewability" to differentiate time and age limitations allowed in renewability provisions in excepted benefits policies from the renewability provisions for individual hospital, medical and surgical coverage, which cannot allow such limitations. However, the commenter expressed concern about provisions in §§3.3019, 3.3020, and 3.3050 that would allow companies offering excepted benefits to issue policies from printed stock existing on the day before the effective date of the subchapter, but prohibit companies from printing any new policies not conforming to new terminology. The commenter stated that a company conceivably could issue policies indefinitely from a large stock of printed policies and suggested that the department put a time limitation on how long such policies could be issued.

Agency Response. The department agrees that a time limitation is appropriate. Allowing companies offering excepted benefits to continue to issue policies from stock existing before the effective date of the rules is intended to effectuate a low-cost transition to new forms, not to allow companies to avoid using new forms indefinitely. The adopted sections will allow the issuance of policies from stock existing before the effective date of the rules only through May 31, 1998.

§3.3038. A commenter stated that HIPAA allows individual hospital, medical and surgical coverage to be guaranteed renewable until the contract's stated expiry date, and the rules should expressly allow this. The commenter also stated that the rules should not mandate guaranteed renewability provisions in policy forms, if those provisions may be no longer valid upon publication of final rules by the Health Care Financing Administration implementing HIPAA or upon amendments to HIPAA.

Agency Response. The department disagrees. As mandated by HIPAA and HB710, individual hospital, medical and surgical coverage shall be renewable or continue in force at the option of the insured, except in very limited circumstances that do not include reaching a contract's termination date. The existence of a termination date cannot be reconciled with the general requirement to continue the policy in force at the option of the insured. The department notes that in the course of its policy approval process, it presently reviews very few individual health policies containing expiry dates other than a Medicare eligibility date. The department also notes that consistent with state and federal law, coverage falling within the definition of "excepted benefits" in §3.3002, including any short-term policy with a termination date of 12 months or less after its effective date, does not have to comply with the mandatory guaranteed renewability provisions applicable to individual hospital, medical and surgical coverage. All guaranteed renewability provisions added by these amended rules conform to federal law now in effect. Through such conformance, the state avoids abdicating enforcement power to the federal government. If changes to federal law occur, the department will evaluate at that time the need to propose rules.

§3.3038. A commenter stated that HIPAA makes guaranteed renewable policies subject to an insurer's unilateral amendments upon renewal of the policies, provided that the amendments are made uniformly for all policyholders under the same policy form. The commenter stated that federal law allowing uniform modifications prohibits honoring individual policyholder requests for changes to a policy, or offering a policy change to all insureds with the same form and allowing each insured to accept the change at his or her option. The commenter asserted that Texas must allow insurers to modify policies unilaterally at renewal, because this is the only way under HIPAA that insurers can respond to policyholder requests for changes, or can adapt policies to future changes in medical services or state law.

Agency Response. The department disagrees that allowing insurers to unilaterally modify a policy form as insureds renew their policies is required by HIPAA, or that it is necessary. HIPAA states that such uniform policy modifications may be made if consistent with state law. Neither HB710 nor other provisions of Texas law allow insurers to make such unilateral modifications. See 28 TAC §3.3040(b) (requiring that any riders or endorsements added after the effective date of the policy either be requested or accepted in writing by the insured). On the other hand, HIPAA's uniform modification provision does allow insurers to modify policy provisions at renewal if the modifications are based on state legislative mandates, because, obviously, such mandates would be consistent with state law. HIPAA does not prohibit changes to a policy made at the request of the insured or offers made to all persons with the same policy form, and such actions are explicitly allowed by §3.3040(b). HIPAA requires a policy to be renewed with the same terms (excepting rates) only if the insured exercises the option to renew. It does not limit an insured's ability to seek or accept policy modifications. To clarify these issues, a subsection (h) has been added to §3.3038.

§3.3038(b). Continued coverage of Medicare recipients. A commenter acknowledged that HIPAA requires continued coverage of Medicare recipients, but stated that Congress likely may change this within the next year. The commenter stated that since HB710 and these rules were intended to comply with federal requirements, the department should echo any federal changes through future rule amendments.

Agency Response. The department will evaluate any future modifications in federal law when they occur. As evidenced by §3.3038(b), these rules (in conformance with applicable federal law) do not require insurers to duplicate Medicare coverage.

§3.3038(c). A commenter stated that subsection (c) omits a federal and state statutory basis for nonrenewal–when a person no longer resides in a service area.

Agency Response. The department agrees that this exception is appropriate for companies governed by Chapter 20 of the Insurance Code, because they are precluded from offering coverage outside of designated service areas, and has changed §3.3038(c) for this purpose. This exception applies only to Chapter 20 insurers. The exception does not apply to coverage with preferred provider organization ("PPO") provisions, because applicable statutes and rules do not prohibit payment of benefits under such coverage for services received by insureds outside the PPO service area. See, e.g., 28 TAC §3.3704(6). The department also has made a corresponding change to the promulgated language in the outline of coverage provisions in §3.3092(b)(5).

§3.3052(a). A commenter expressed concern that provisions of this section could prevent insurers from terminating spouse coverage because of dissolution of the marriage, or from terminating dependent coverage because the dependent has reached a limiting age. The concern is based on language in subsection (a) stating that individual hospital, medical or surgical coverage can only be terminated for the reasons for nonrenewal allowed by §3.3038 of this section.

Agency Response. The department did not intend to prohibit such termination of spouse or dependent coverage, except to the extent such termination is prohibited or limited by existing Texas law, and does not believe HIPAA prohibits such termination. To clarify these issues, provisions relating to individual hospital, medical and surgical coverage have been revised by placing them in a separate subsection (b) and adding clarifying language.

§3.3110(b). A commenter disagreed with §3.3110(b), which makes policies deemed continuous and not annually renewed under Insurance Code Article 3.70-13 subject to the mandatory guaranteed renewability provisions on the first policy anniversary date after the effective date of the subchapter as amended. The commenter stated that both HB 710 and HIPAA apply only to policies issued for delivery, delivered or renewed after July 1, 1997, and that applying any of these rules to policies deemed continuous under Article 3.70-13 is inconsistent with those statutes.

Agency Response. The department disagrees. The guaranteed renewability amendments are necessary to implement HIPAA. The relevant HIPAA provisions apply to all policies "offered, sold, issued, renewed, in effect or operated in the individual market after June 30, 1997 . . ." See §2747(b) of PHSA. In Section 3.02 of HB710, the Legislature directed the commissioner to "adopt rules necessary to . . . meet the minimum requirements of federal law and regulations." Applying the mandatory guaranteed renewability requirements to policies deemed continuous under Texas law as set forth in §3.3110(b) is necessary to accomplish conformance with federal law. The subsection explicitly excludes such policies from any other requirements in these adopted amendments for the prescribed statutory period of continuity.

For, with changes: Blue Cross Blue Shield of Texas, Insurance Alliance of America, Office of Public Insurance Counsel, Texas Association of Life and Health Insurers Against: Provident American Insurance.

The amendments to Subchapter S are adopted under the Insurance Code Articles 3.70-1 and 3.70-1A (as each article was amended by the 75th Legislature in HB710, Sections 3.01 and 3.02, respectively, effective July 1, 1997), and Article 1.03A. Article 3.70-1(H)(4) requires health insurers in the individual market to not apply, or in some cases to limit application, of preexisting condition provisions to certain insureds moving from the group to the individual market. These provisions of Article 3.70-1, which are patterned after, though not required by, provisions of HIPAA, complete the portability circle for healthy, insurable individuals, providing such individuals an alternative to coverage by the Texas Health Insurance Risk Pool created by the Insurance Code Article 3.77 (as also amended by HB710). The Texas Health Insurance Risk Pool implements an alternative guaranteed availability mechanism allowed by HIPAA and federal rules promulgated under HIPAA. Subsection D of Article 3.70-1 gives the commissioner authority to issue

"such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article." Subsection (E) of the article authorizes the commissioner to issue rules establishing standards for preexisting conditions.

Article 3.70-1A requires that certain individual health insurance policies be guaranteed renewable, at the option of the insured, without time or age restrictions. The guaranteed renewability provisions are mandated by HIPAA and federal rules promulgated under HIPAA. Subsection (c) of Article 3.70-1A requires the commissioner to adopt rules necessary to implement Article 3.70-1A and to meet the minimum requirements of the article and of federal law and regulations. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The federal mandate for guaranteed renewability in the individual health insurance market is contained in §2742 of the Public Health Service Act, as amended by section 111 of HIPAA. The Department of Health and Human Services promulgated interim rules implementing the guaranteed renewability provisions of HIPAA at 45 C.F.R. §148.122. To the extent that the federal guaranteed renewability rules contain required provisions not specifically addressed by HB710, the department has addressed such provisions in these amendments, pursuant to Article 3.70-1A(c).

§3.3018. Policy Definition of Preexisting Condition.

(a) Subject to the conditions set forth in subsection (b) of this section, a policy subject to this subchapter may contain provisions limiting or denying coverage based on the existence of a preexisting condition or conditions. "Preexisting condition" may not be defined to be more restrictive than the following: Preexisting condition means the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a five year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a five year period preceding the effective date of the coverage of the insured person. This does not prohibit an insurer, using an application form designed to ask questions concerning the health or medical history of a prospective insured and on the basis of the answers on that application, from fully underwriting in accordance with that insurer's established standards. It does, however, prohibit an insurer that elects to use a simplified application from reducing or denying a claim on the basis of the existence of a preexisting condition that is defined more restrictively than above.

(b) In regards to individual hospital, medical or surgical coverage:

(1) no preexisting condition provision shall apply to an individual who was continuously covered for an aggregate period of 18 months by creditable coverage (as defined in §3.3002 of this subchapter (relating to Definitions)) that was in effect up to a date not more than 63 days before the effective date of the coverage, excluding any waiting period, and whose most recent creditable coverage was under a group health plan, governmental plan or church plan, as such plans are defined in §3.3002 of this subchapter.

(2) In determining whether a preexisting condition provision applies to an individual whose most recent creditable coverage was under a group health plan, governmental plan or church plan, but who does not have aggregate creditable coverage totaling 18 months, the insurer shall credit the time the individual was previously covered under creditable coverage if the previous coverage was in effect at any time during the 18 months preceding:

(A) the first day coverage is effective, if there is not a waiting period; or

(B) the day that the individual files a substantially complete application for coverage, if there is a waiting period.

(3) When determining the applicability of preexisting condition provisions in accordance with paragraphs (1) and (2) of this subsection, an insurer of individual hospital, medical or surgical coverage shall comply with required notices, disclosures and other applicable provisions of Chapter 21, Subtitle K (relating to Certification of Creditable Coverage) of this title.

(4) The application of paragraphs (1) and (2) of this subsection are demonstrated by the following examples:

(A) Individual A: Not subject to any preexisting condition limitation:

(i) Relevant insurance history: Individual A was covered under an individual policy for 12 months beginning on January 1, 1996 through December 31, 1996, followed by a gap in coverage of 58 days until February 28, 1997. Individual A then was covered under a group health plan beginning on March 1, 1997 for six months through August 30, 1997, followed by a gap in coverage of 61 days until October 31, 1997.

(ii) Present coverage: Individual A applies for individual hospital, medical and surgical coverage on November 1, 1997, and the insurer issues the coverage on December 1, 1997.

(iii) Applicability of preexisting condition prohibited: Pursuant to paragraph (1) of this subsection, the insurer offering the individual hospital, medical and surgical coverage cannot apply any preexisting condition provision to Individual A because: A's most recent past creditable coverage was under a group health plan; A has 18 months of creditable coverage–six months under the group plan and 12 months under the previous individual plan–up to a date not more than 63 days from the effective date of the coverage (excluding the one-month waiting period); and there were no significant breaks–i.e., more than 63 days–in the 18 months of creditable coverage.

(B) Individual B: Subject to preexisting condition provision:

(i) Relevant insurance history: Individual B had coverage under a group health plan for 12 months beginning on January 1, 1996 through December 31, 1996, followed by a gap in coverage of 58 days until February 28, 1997. Individual B then was covered under an individual health insurance policy beginning on March 1, 1997 for 6 months through August 30, 1997, followed by a gap in coverage of 61 days until October 31, 1997.

(ii) Present coverage: Individual B applies for a policy offering individual hospital, medical and surgical coverage on November 1, 1997 and is issued coverage on December 1, 1997.

(iii) No exemption from preexisting condition provisions: Under paragraph (1) of this subsection, the insurer offering the individual hospital, medical and surgical coverage can fully apply any preexisting condition provision to Individual B, because B's most recent coverage was under an individual health plan, rather than a group health plan, governmental plan or church plan. Unless an insured's most recent creditable coverage was under a group health plan, governmental plan or church plan, the insurer is not required to take into account any of the insured's past creditable coverage under either paragraphs (1) or (2) of this subsection.

(C) Individual C: Twelve-month credit against preexisting condition period:

(i) Relevant insurance history: Individual C was covered under an individual health insurance policy for 18 months beginning January 1, 1996 through June 30, 1997, followed by a four-month gap in coverage from July 1, 1997 to October 31, 1997. On November 1, 1997, Individual C was covered under a group health plan for three months, through January 31, 1998, followed by a two-month gap in coverage.

(ii) Present coverage: Individual C applies for a policy offering individual hospital, medical and surgical coverage on March 1, 1998 and is issued coverage on June 1, 1998.

(iii) Twelve-month credit applied: Individual C's most recent creditable coverage was under a group health plan, so the insurer must perform a creditable coverage analysis. However, C is not eligible to be exempt from a preexisting condition provision under paragraph (1) of this subsection, because of the significant break (four months) in C's creditable coverage. Under paragraph (2) of this subsection, an insurer must then total up the creditable coverage in the 18 months preceding the effective date of the policy, excluding the waiting period. Because the waiting period in this scenario is three months, the insurer essentially must look back to the start of the waiting period–i.e., the application date of March 1, 1998–and count back 18 months from there. In the eighteen months between September 1, 1996 and March 1, 1998, Individual C had total of twelve months creditable coverage–nine months from September 1, 1996 to June 1, 1997, and three months from October 1, 1997 to January 31, 1998. Accordingly, the insurer must credit twelve months against any preexisting condition period.

(D) Individual D: Six months credit against preexisting condition period:

(i) Relevant insurance history: After being uninsured for a number of years, Individual D was covered under a governmental plan from March 1, 1997 to September 30, 1997, followed by a 31-day gap in coverage.

(ii) Present coverage: Individual D applies for a policy offering individual hospital, medical and surgical coverage on November 1, 1997 and is issued coverage on December 1, 1997.

(iii) Six-month credit applied: Individual D's most recent creditable coverage was under a governmental plan, so the insurer must perform a creditable coverage analysis. However, D is not eligible to be exempt from a preexisting condition provision under paragraph (1) of this subsection, because D has no other past coverage that could count towards an 18-month aggregate total of creditable coverage. Under paragraph (2) of this subsection, an insurer must give Individual D a six-month credit against any preexisting condition period.

§3.3019. Policy Definition of Noncancellable.

(a) The term "noncancellable" may be used only in a policy which the insured has the right to continue by the timely payment of premiums set forth in the policy until at least age 50, or in the case of a policy issued after age 44, for at least five years. The insurer may not unilaterally make any change in any provision of the policy while the policy is in force. Except in the limited circumstances delineated in subsection (b) of this section, an insurer shall not use the phrase "noncancellable and guaranteed renewable" in relation to coverage that meets the above definition, unless it also meets the definition of "guaranteed renewable" set forth in §§3.3020(a) (relating to Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability) and 3.3038 (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions) of this subchapter.

(b) In regards to policies offering excepted benefits, an insurer may continue to issue through May 31, 1998 policies from printed stock existing on the day before the effective date of this subchapter that are noncancellable, as defined in subsection (a) of this section, and that refer to the policy as "noncancellable and guaranteed renewable," as was allowed by rule before the effective date of this subchapter. An insurer may not print any new noncancellable policies on or after the effective date of this subchapter which use policy language describing the policy as "noncancellable and guaranteed renewable," unless such policy also meets the definition of guaranteed renewable set forth in §§3.3020(a) (relating to Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability) and 3.3038 (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions) of this subchapter.

§3.3020. Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability.

(a) In regards to individual hospital, medical or surgical coverage, the term "guaranteed renewable" shall not be defined more restrictively than set forth in §3.3038 of this subchapter (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions). Unless the policy or coverage also is noncancellable (as defined in §3.3019 of this subchapter (relating to Policy Definition of Noncancellable), the policy definition of guaranteed renewable shall state clearly that the insurer retains the right, at the time of renewal of a policy, to make changes in premium rates by classes.

(b) In regards to excepted benefits:

(1) Except in the limited circumstances delineated in paragraph (4) of this subsection the term guaranteed renewable shall not be used unless the term is defined consistently with subsection (a) of this section and mirrors all mandatory provisions of §3.3038 of this subchapter (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions).

(2) An insurer may use the term "limited guarantee of renewability," which shall not be defined more restrictively than the right of the insured to continue the coverage in force by the timely payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least five years from its date of issue, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force, except that the insurer may make changes in premium rates by classes.

(3) Unless the policy or coverage also is noncancellable (as defined in §3.3019 of this subchapter (relating to Policy Definition of Noncancellable), the policy definition of guaranteed renewable or of limited guarantee of renewability shall state clearly that the insurer retains the right, at the time of renewal of a policy, to make changes in premium rates by classes.

(4) An insurer may continue to issue through May 31, 1998 policies from printed stock existing on the day before the effective date of this subchapter that contain a policy definition of "guaranteed renewable" conforming to the definition of the term allowed by rule before the effective date of this subchapter. The previous definition, setting the minimum standard for a guaranteed renewable policy, was the same as the definition of limited guarantee of renewability, as set forth in paragraph (2) of this subsection. An insurer may not print any new policies offering excepted benefits on or after the effective date of this subchapter which use policy language describing the policy as "guaranteed renewable," unless such policy also conforms to the definition of "guaranteed

renewable" set forth in subsection (a) of this section and in §3.3038 of this subchapter (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions) of this subchapter.

§3.3038. Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions.

(a) Except as provided by subsection (c) of this section, all individual hospital, medical or surgical coverage (as defined in §3.3002(b)(12) of this subchapter (relating to Definitions)) shall be renewed or continued in force at the option of the insured.

(b) Medicare eligibility or entitlement is not a basis for nonrenewal or termination of individual hospital, medical or surgical coverage; however, such coverage sold to an insured before the insured attains Medicare eligibility may contain a clause that excludes payments for benefits under the policy to the extent that Medicare pays for such benefits.

(c) Individual hospital, medical or surgical coverage may only be discontinued or nonrenewed based on one or more of the following circumstances:

(1) the policyholder has failed to pay premiums or contributions in accordance with the terms of the policy, including any timeliness requirements;

(2) the policyholder has performed an act or practice that constitutes fraud, or has made an intentional misrepresentation of material fact, relating in any way to the policy, including claims for benefits under the policy;

(3) the insurer is ceasing to offer individual hospital, medical or surgical coverage under the particular type of policy, or is ceasing to offer any form of individual hospital, medical or surgical coverage in this state, in accordance with subsections (d) and (e) of this section;

(4) in regards only to coverage offered by an issuer under the Insurance Code, Chapter 20, the insured no longer resides, lives, or works in the service area of the issuer, or area for which the issuer is authorized to do business, but only if coverage is terminated uniformly without regard to any health status related factor of covered individuals.

(d) An insurer may elect to discontinue offering a particular type of individual hospital, medical or surgical coverage plan in the individual market only if the insurer:

(1) provides written notice to each covered individual of the discontinuation before the 90th day preceding the date of the discontinuation of the coverage;

(2) offers to each covered individual on a guaranteed issue basis the option to purchase any other individual hospital, medical or surgical insurance coverage offered by the insurer at the time of the discontinuation; and

(3) acts uniformly without regard to any health-status related factors of a covered individual or dependents of a covered individual who may become eligible for the coverage.

(e) An insurer may elect to refuse to renew all individual hospital, medical or surgical coverage plans delivered or issued for delivery by the insurer in this state only if the insurer:

(1) notifies the commissioner of the election not later than the 180th day before the date coverage under the first individual hospital, medical or surgical health benefit plan terminates;

(2) notifies each affected covered individual not later than the 180th day before the date on which coverage terminates for that individual; and

(3) acts uniformly without regard to any health-status related factor of covered individuals or dependents of covered individuals who may become eligible for coverage.

(f) An insurer that elects not to renew all individual hospital, medical or surgical coverage in Texas in accordance with subsection (e) of this section may not issue any such coverage in Texas during the five-year period beginning on the date of discontinuation of the last such coverage not renewed.

(g) Nothing in this section prohibits or restricts an insurer's ability to make changes in premium rates by classes in accordance with applicable laws and regulations.

(h) Nothing in this section shall be interpreted as prohibiting an insurer from making policy modifications mandated by state law, or, acting consistently with §3.3040(b) of this title (relating to Prohibited Policy Provisions), from honoring requests from a policyholder for modifications to an individual policy or offering policy modifications uniformly to all insureds under a particular policy form.

§3.3050. Standards for Renewability Provisions.

(a) Each policy subject to this subchapter:

(1) Shall include a renewal, continuation, or nonrenewal provision, consistent with the requirements of this subchapter. The language or specifications of such provision must be consistent with the type of contract to be issued (e.g., guaranteed renewable, noncancellable, limited guarantee of renewability, limited renewability at the option of the insurer, single term nonrenewable, etc.). Such provision must be appropriately captioned and commence or be referenced on the first page of the policy. All limitations on renewability must be clearly stated.

(2) Which contains a provision reserving the right of the insurer to increase the premium charged for such policy at the time such policy is renewed shall have printed at the top of the first page of such policy, and may not be preceded by any language except the company name, logo, or masthead (and address if shown) in not less than 10 point type, a statement that the premium may be increased upon the renewal date.

(3) Which contains a provision reserving the right of the insurer to nonrenew the policy upon the insured's attaining a certain age or a provision whereby the policy terminates upon attainment of a certain age shall have printed at the top of the first page of such policy, and may not be preceded by any language except the company name, logo, or masthead (and address, if shown) in not less than 10 point type, a statement that such policy may be subject to nonrenewal upon attainment of a certain age or that the policy will be terminated upon attainment of a specified age. This requirement may be combined into one statement with the requirement in paragraph (2) of this subsection, if the policy is subject to change in premium upon renewal and to nonrenewal or termination upon the insured's attainment of a specified age.

(b) Standards for specific types of renewability provisions.

(1) Noncancellable Policy–A renewal provision of a policy characterized as "noncancellable" must be consistent with the minimum requirements set forth in §3.3019 of this subchapter (relating to Policy Definition of Noncancellable Policies). In a family policy covering both husband and wife the age of the younger spouse must be used as the basis for fulfilling the age (at least to age

50) or durational (for at least five years if issued after age 44) requirements for the definition of a noncancellable policy for the purpose of defining the period of noncancellability of the policy. This requirement shall not prevent termination of coverage of the older spouse upon attainment of the stated age limit (e.g. age 65), so long as the termination is not otherwise prohibited by law and the policy may be continued in force as to the younger spouse to the age or for the durational period as specified in said definition. Except as otherwise provided in §3.3019(b), a policy shall not refer to a noncancellable policy as "noncancellable and guaranteed renewable, unless the policy also meets the definition of guaranteed renewable set forth in §§3.3020(a) (relating to Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability) and 3.3038 (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions) of this subchapter.

(2) Guaranteed renewable policy–Except as provided in §3.3020(b)(4) of this subchapter (relating to Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability), the renewal provision used in a policy which is characterized as a "guaranteed renewable policy" must be consistent with the minimum requirements relating to use of the term guaranteed renewable set forth in §§3.3020 and the provisions of §3.3038 (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions) of this subchapter. Every policy offering individual hospital, medical or surgical coverage shall contain a guaranteed renewability provision applicable to such coverage.

(3) Limited guarantee of renewability policy–The renewal provision used in a policy which is characterized as having a "limited guarantee of renewability" must be consistent with the minimum requirements relating to use of the term "limited guarantee of renewability" set forth in §3.3020 of this subchapter (relating to Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability). The renewal provision will be the same as that contained in a "noncancellable policy" except for the reservation of the right to the insurer to change premium on a class basis. Such right shall be clearly expressed within the renewal provision and referenced in the caption of such provision. A limited guarantee of renewability may apply to excepted benefits, but shall not apply to individual hospital, medical or surgical coverage.

(4) Renewable subject to consent of company and variants thereof. The renewability options set forth below may apply to excepted benefits, but shall not apply to individual hospital, medical or surgical coverage.

(A) The renewal provision of a policy which is renewable at the option of the company shall be appropriately captioned. The provision shall clearly declare that renewal of the policy is subject to the consent of the insurer and that the premium rate applicable to such policy shall be that currently in use on each renewal date of the policy. If the insurer reserves the right of cancellation, notice of the existence of the provision shall be cross-referenced in the renewal provision.

(B) Conditional or limited continuance–A policy which provides a qualified right of continuance (after expiration of the period during which such policy is noncancellable or subject to a limited guarantee of renewability) must clearly specify the conditions which must be fulfilled to permit continuance of the policy. If premiums are to be based on an attained age or on a step-rate basis, such must be declared in the renewal provision. The age limit, if any, to which any policy is renewed shall be declared in the renewal provision.

(C) Qualified right of renewal–A renewal provision, other than enumerated above, may grant to the insured the right of renewal by timely payment of premium up to a stated age, if any, subject to the reserved right of the insurer to nonrenew all such policies on a specified basis upon the giving of a specified period of notice, which shall be set forth in the appropriate provision of the policy. The right of the insured to renew the policy may be conditioned upon the continuation of a reasonable specified status (e.g., an employee of a named employer, member of a named organization, while engaged in a specific occupation associated with such employment or such organization, residence in a given state or geographic area, insured under a given form of insurance having like form number identification). The rights of the insured and of the insurer shall be clearly set forth in the renewal provision. Such provision shall include, where applicable, the specified age limit, requirements as to the professional or occupational status, and requirements as to the continuing relationship of the employee or member. Continuance of insurance after the insured ceases to be eligible for coverage under the plan may be at the option of the insurer. If a different table of premium rates is to be applicable with respect to renewals occurring thereafter, such fact shall be declared in the renewal provision.

(D) Single term nonrenewable policy–A policy characterized as a "single term nonrenewable policy" shall include a provision appropriately captioned (e.g., "This policy is not renewable" or words of similar import). Such provision must identify or reference the proper part of the contract within which the duration of the coverage is specified.

(5) Limited renewability at the option of the insured–A policy which may not be characterized as noncancellable or as having a limited guarantee of renewability solely because such policy may not be continuable to age 50 or for a minimum period of five years, may use a renewal provision caption, subject to the approval of the commissioner, which states that the right of the renewal is vested in the insured for a stated period of years, to a stated age, to the occurrence of a stated event or during the continuance of a given status. Such a provision may apply to excepted benefits, but shall not apply to individual hospital, medical or surgical coverage. A policy printed on or after the effective date of this subchapter shall not refer to such a renewability provision as "renewable at the option of the insured." However, in regards to excepted benefits, an insurer may continue to issue through May 31, 1998 policies from printed stock existing on the day before the effective date of this subchapter that refer to such a renewability provision as "renewable at the option of the insured," as was previously allowed by rule.

§ 3.3052. Standards for Termination of Insurance Provision.

(a) A policy subject to this subchapter shall include termination provisions which shall specify as to each eligible family member, as set out in §3.3051 of this subchapter (relating to Initial and Subsequent Conditions of Eligibility Provision), the age, or event, if any, upon which coverage under the policy will terminate.

(b) In regards to individual hospital, medical or surgical coverage, a policy shall only contain the following bases for termination of coverage:

(1) the bases for nonrenewal contained in §3.3038 of this subchapter (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions);

(2) in regards to policies covering a spouse of the primary insured or dependents:

(A) Coverage of the spouse may terminate upon the dissolution of the marriage through divorce or other lawful means, subject to this section, §21.407 of this title (relating to Continuance of Coverage) and other applicable law; and

(B) Coverage of a dependent may terminate upon the dependent's attainment of a limiting age, subject to this section, article 3.70-2(C), Insurance Code (relating to Form of Policy), and other applicable law.

(c) A policy containing noncancellable, guaranteed renewable or limited guarantee of renewability provisions may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium. The provision shall stipulate that in the event of the insured's death the spouse of the insured, if covered under the policy, shall become the insured.

(d) The provision shall stipulate that if the insurer accepts premium for coverage extending beyond the date, age or event specified for termination as to an insured family member, then coverage as to such person shall continue during the period for which an identifiable premium was accepted, except where such acceptance was predicated on a misstatement of age outlined in the Insurance Code, Article 3.70-7.

(e) In the event of cancellation by the insurer or refusal to renew by the insurer of a policy providing pregnancy benefits, the provision shall provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy continued in force.

(f) The provision shall stipulate that termination of the policy by the insurer shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured person limited to the duration of the policy benefit period, payment of the maximum benefits or to a time period of not less than three months.

(g) The provision may provide for the termination or suspension of family members who become eligible for coverage provided by the federal government.

(h) A policy may not provide for termination of coverage of a dependent child on attainment of the limiting age for dependent children specified in the policy while the child is:

(1) incapable of self-sustaining employment due to mental retardation or physical handicap; and

(2) chiefly dependent upon the insured for support and maintenance. Proof of the incapacity and dependency shall be furnished to the insurer by the insured within 31 days of the child's attainment of the limiting age and subsequently as may be required but not more frequently than annually after the two-year period following the child's attainment of the limiting age. Upon the attainment of the limiting age, the applicable adult premium may be charged.

§3.3092. Format, Content, and Readability for Outline of Coverage.

(a) (No Change.)

(b) Content.

(1)-(4) (No Change.)

(5) Drafting instructions for paragraph (5). This paragraph shall include a description of the provisions regarding renewability including any limitation by age, time, or event, status requirements, any reservation by the insurer of a right to change premiums or right of cancellation, and any other matter appropriate to the terms and conditions of renewability. If the policy, or any part of the policy, consists of individual hospital, medical, or surgical coverage, paragraph (5) shall include language regarding guaranteed renewability substantially similar to the following: "This (policy/coverage) is guaranteed renewable. That means that you have the right to keep the policy in force with the same benefits, except that we may discontinue or terminate the policy if: "1. You fail to pay premiums as required under the policy; "2. You have performed an act or practice that constitutes fraud, or have made an intentional misrepresentation of material fact, relating in any way to the policy, including claims for benefits under the policy; or "3. We stop issuing the (policy/coverage) in Texas, but only if we notify you in advance." (Include, if coverage offered by an issuer under the Insurance Code, Chapter 20: "4. You no longer reside, live, or work in our service area, as described in the policy." (Include, if applicable: "This policy will not terminate when a covered person becomes eligible for Medicare. However, the policy excludes any benefits that are paid to a covered person by Medicare.") "Unless the policy is 'noncancellable,' as defined in the policy, we have the right to raise rates on your policy at each time of renewal, in a manner consistent with the policy and Texas law. If the policy is noncancellable, our right to raise rates is limited by the definition of 'noncancellable' contained in the policy, and by Texas law."

(6) (No change.)

(c) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716087
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 22, 1997
Proposal publication date: August 29, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

28 TAC §3.3078

The Commissioner of Insurance adopts repeal of 28 Texas Administrative Code ("TAC") §3.3078 without changes to the proposed text published in the August 29, 1997 issue of the *Texas Register* (22 TexReg 8596).

The repeal of §3.3078, which relates to Minimum Standards for Medicare Supplement Expense Coverage, is necessary because the section is obsolete. Rules governing such minimum standards for Medicare supplement policies now are contained in 28 TAC, Chapter 3, Subchapter T. This repeal is adopted in conjunction with amendments to Subchapter S published elsewhere in this issue of the *Texas Register.*

The repeal of §3.3078 removes from the TAC obsolete provisions relating to Medicare supplement expense coverage. The removal of §3.3078 from Subchapter S will not any affect other sections in Subchapter S.

The Department received no comments on the proposal.

The repeal is proposed pursuant to the Insurance Code, Articles 3.74, 1.02 and 1.03A. Article 3.74 governs minimum standards

for Medicare supplement policies. Section 10 of Article 3.74 authorizes the Commissioner of Insurance to adopt rules that are necessary and proper to carry out Article 3.74. Article 1.02 provides that a reference in the Insurance Code to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the commissioner and the department. Article 1.03A provides that the commissioner may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716086
Carloine Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 22, 1997
Proposal publication date: August 29, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

Chapter 21. Trade Practices

Subchapter K. Certification of Creditable Coverage

28 TAC §§21.1101–21.1110

The Commissioner of Insurance adopts new Subchapter K, §§21.1101 - 21.1110, concerning certification of creditable coverage. Sections 21.1104, 21.1106, 21.1107, 21.1108 and 21.1110 are adopted with changes to the proposed text as published in the August 29, 1997 issue of the *Texas Register* (22 TexReg 8597). Sections 21.1101 - 21.1103, 21.1105 and 21.1109 are adopted without changes and will not be republished.

This new subchapter is necessary to implement House Bill 1212 enacted by Acts, 75th Legislature, 1997, and codified at Texas Insurance Code Article 21.52G, effective July 1997. House Bill 1212 requires issuers of health benefit plans to provide certification of creditable coverage upon termination of coverage for the insured or dependents of the insured indicating the period of applicable coverage credited towards the application of any preexisting condition exclusion provision. It also authorizes the Commissioner of Insurance to establish rules setting out the certification of creditable coverage standards including meeting the minimum standards required by federal law in the Health Insurance Portability and Availability Act of 1996 (sometimes referred to as "HIPAA") and federal regulations. This subchapter establishes procedures and minimum standards for issuance of certificates of creditable coverage. This subchapter is also necessary to provide guidance to issuers of health benefit plans in determining the applicable timeframes for individual and group coverage credited towards the application of any preexisting condition provision. This subchapter also provides a model certificate that can be utilized by plans and issuers for crediting prior coverage for those individuals seeking health coverage from one insurer to another.

After receiving public comments on the proposal, the department has made the following changes to the subchapter. Based on comments, changes were made to §21.1104(b)(7) and (8) to clarify that the issuer may either indicate the date that any waiting period (and affiliation period if applicable) began and the date creditable coverage began or may indicate the individual has the full amount of creditable coverage on the certification. Based on comments, the department added language to §21.1104(c) to clarify that a substantially similar form to Form CCC provided at Figure 1, §21.1110, or the federal model found in HIPAA regulations with modifications to reflect applicable time limits for Texas residents may be used to certify creditable coverage. Based on comments, subsection (g) was added to §21.1104 to provide that a certification of creditable coverage issued prior to the adoption of this subchapter that is in compliance with the federal regulations and properly reflects the creditable time period applicable to Texas residents, will be acceptable. Based on comments, §21.1106(b) was changed to allow a certificate for dependent coverage to state the name of the individual covered by the health benefit plan and specify the type of coverage where the issuer is unable to provide the dependent's last known address. In response to comments, subsection (i) was added to §21.1107 to clarify that an issuer of a health benefit plan may provide coverage and receive premium during the period of determination of creditable coverage. In response to comments, clarifying language was added to §21.1108(a) to provide that a notice to the individual by the issuer of the health benefit plan is only required if an preexisting condition exclusion period is to be applied. Based on comments, No. 9 on Form CCC, Figure 1, §21.1110, was changed to be consistent with the definitions in this subchapter by using the date the application was filed instead of the date the application was received.

Section 21.1101 defines key words and terms used in this subchapter. Section 21.1102 contains information regarding the issuance of a certification of creditable coverage by each issuer of a health benefit plan and allows an issuer of a health benefit plan to contract with a third party administrator or plan sponsor to provide a certification of creditable coverage. Section 21.1103 addresses the timing of issuance of a written certificate of creditable coverage to an individual by the issuer under certain conditions and provides that issuance of the certificates are without charge to the individual for up to 24 months after coverage ceases. The requirements of the form and content for a written certificate of creditable coverage are set forth in §21.1104 along with provisions allowing the use of a substantially similar form to the one provided in this subchapter or the use of the federal model contained in the federal regulations with modifications. Section 21.1105 sets out requirements of delivery of a certificate of creditable coverage, including, allowing the use of fax or e-mail and establishes when separate mailings of certificates are required for dependents. Section 21.1106 contains information relating to determination of information concerning dependent coverage. Section 21.1107 sets forth other means of establishing creditable coverage in the absence of a creditable coverage certificate. Section 21.1108 sets forth the requirements of determination of creditable coverage and notification of a preexisting condition exclusion to an individual by an issuer of a health benefit plan. Section 21.1109 provides for severability of terms or sections of this subchapter under certain circumstances. Section 21.1110 contains a creditable coverage form developed by the department.

Delay Adoption of Regulations. Two commenters requested that the adoption of regulations for the certification of creditable coverage be delayed until the U.S. Health and Human Services Department adopts final regulations. The commenters stated that the final regulations are not due until the fall of 1998 and that during the interim the insurers of Texas should be allowed to apply creditable coverage rules as best fits their existing policy forms. One commenter stated that the federal regulations are not clear and are subject to major changes during the final adoption process. Another commenter requested that if substantial changes are made to the federal regulations during the final adoption stage that the department issue new regulations to reflect those changes.

Agency Response. The department disagrees. Although the federal government may not yet have adopted final rules regarding creditable coverage, there are existing state and federal laws on this subject. The department feels that it is appropriate and timely to implement rules adopting state legislation rather than waiting for the federal government to adopt final rules because it is not expected that substantial change will occur to the final adopted federal rules. The department believes the adoption of Subchapter K is necessary so that issuers of health benefit plans will have rules which accurately reflect Texas law, which differs in part, from federal law. The department will evaluate the need to amend Subchapter K when the federal rules are finally adopted.

Applications. A commenter asked how they should handle an application in which the applicant requests that the coverage not be effective until some future date. Another commenter expressed concern regarding applications that are not dated and sought clarification.

Agency Response. The carrier/agent has the responsibility to advise the applicant that requesting coverage at a future date may result in a significant break in coverage (i.e. the federal rules allow the break in coverage to stop upon application for application processing delays....not for requests for coverage at a future date). The applicant would then have to make a decision to either accept the coverage with an earlier effective date or be subject to some or all of the preexisting condition limitations. Neither the summary to the federal rules nor the federal rules address the issue of "what if the application is not dated." The department believes the date the agent takes the application would be the date the application is filed. If there is no agent, the date of application would be the date the application is hand delivered to the agent's or company's place of business or if mailed, the date of postmark. In the situations where there is a discrepancy between the postmark date and the date the individual signed the application, the postmark date will be considered the filed date.

21.1101 Creditable Coverage. A commenter is concerned about the consistency between state and federal requirements and notes that neither HIPAA nor HB 1212 (Articles 26.035 and 21.52G) contain the provision of "short term limited duration" as provided in the proposed definition section of creditable coverage. Another commenter asked if a certificate of creditable coverage must be issued for short term limited duration coverage in light of the wording in federal legislation which suggests that no certificate of creditable coverage is required: "whether the coverage is short-term, limited duration coverage or other coverage for benefits for medical care for which no certificate of creditable coverage is required."

Agency Response. The department agrees that the term "short term limited duration" is not in the definition of creditable coverage in either HIPAA or HB 1212; however, the term is defined in the definitions of the federal regulations and is also referred to in the "rules relating to creditable coverage" of the federal regulations and is therefore, an appropriate term to be included in the definition of creditable coverage and defined in Subchapter K. Article 21.52G of the Insurance Code requires a certificate to be issued for all creditable coverage in the manner established by rule. Consequently, in Texas, a certificate of creditable coverage is also required for short term limited duration coverage.

21.1101 Waiting Period. One commenter asked what constitutes a "substantially completed application." Another commenter asked why the department is using the term "first day of coverage" instead of the term "effective date" since "effective date" is used in other regulations.

Agency Response. The summary to federal rules implementing HIPAA states that processing delay of an application or omission of details will not cause a significant break in coverage for a person who files a substantially completed application. Based on this language, the department believes a substantially completed application would be one that contains sufficient information to allow the company to contact the applicant to obtain the omitted information. The department recognizes that Article 3.70-1(H)(4) utilizes the phrase "effective date" and the rule utilizes the phrase "first day of coverage." The department believes there is no difference in the meaning of these terms and it appears that the federal government also recognizes the terms mean the same as they utilized the term "effective date" in the summary to the federal rules.

21.1103(a). Because some employers may issue termination notices after the actual termination, a commenter suggested requiring the issuance of a certificate of coverage within 30 days of termination or receipt of notification of termination, whichever comes later.

Agency Response. The department disagrees and believes that the rule follows federal law. The provision is clear that the certificate is to be issued within 30 days from the date the person would lose coverage.

21.1103(d). A commenter understands that the "automatic" certificate should be provided to the covered person without charge. However, the commenter expressed concern that second and subsequent requests, up to two years later, are too expensive and are not required to be provided without charge.

Agency Response. The department recognizes the commenter's concern but the federal regulations provide that requests for certificates are permitted to be made by or on behalf of an individual within 24 months after coverage ceases and are to be provided without charge. Federal law allows the issuer to charge for certifications requested after 24 months from termination of coverage.

21.1104(b)(7)-(8). Two commenters suggested that because federal regulations allow a statement that the person has "full" credit (18 months or more), that the issuer should not have to indicate the number of months coverage is credited if coverage exceeds 18 months. The commenters also requested clarification that the issuer may either indicate on the certificate the number of months covered or the date any waiting/affiliation period began and the date creditable coverage began but

both are not required. The commenters contend that to require both would add significant expense in software/program modifications.

Agency Response. The department agrees that the language should be revised and has changed the language to allow an issuer to state on the certificate either the date any waiting period (or affiliation period, if applicable) began and the date creditable coverage began or a statement indicating the individual has 18 months of creditable coverage for individual coverage, or 12 months of creditable coverage for group coverage.

21.1104(b)(8). One commenter stated that his company currently reports date of hire, date coverage begins, and the waiting period, however, the first day of the waiting period is actually inferred. The commenter contends that because of switch enrollments in dual coverage options calculating the first day of a waiting period is difficult and requested that issuers be allowed to "infer" the first day of a waiting period in situations as described.

Agency Response. The department disagrees. In these instances, federal rules permit issuers to simply transfer the start and stop date of coverage to the new plan in lieu of issuing a certificate.

21.1104(c). A commenter suggested clarifying language be added to indicate that the issuer is not limited to using Form CCC, and the issuer may use a form substantially similar to Form CCC or may use the federal model. One commenter requested a "grandfather" provision be added to protect issuers of creditable coverage certificates prior to adoption of state regulations.

Agency Response. The department agrees with the suggestion regarding a substantially similar form and has changed the subsection to reflect that a substantially similar form or the federal model with modifications may be used. The department agrees with the recommendation and has added subsection (g) to reflect that delivery of a certificate of creditable coverage prior to the adoption of this subchapter shall be deemed to comply with Form CCC provided the certificate complied with the federal regulations and properly reflects the creditable time period applicable to Texas residents.

21.1105(c) and 21.1106(b). A commenter stated that although steps have now been taken to maintain dependent addresses, prior to July 1997, many carriers did not maintain dependent addresses. The commenter recommended new language be added to provide that if the address of a dependent cannot be ascertained, that the certificate may be provided to the person to whom coverage was issued indicating that the certificate is for dependent coverage.

Agency Response. The department agrees with the commenter's concerns and has changed §21.1106 (b) to address the comment.

21.1107. A commenter stated that coverage of a person should not be delayed while any creditable coverage is being debated and recommended language allowing the issuer to provide coverage and receive premium while the coverage information is being determined be added.

Agency Response. The department agrees and has added the necessary language to new subsection (i).

21.1108. A commenter stated that the federal regulations require notification only when a preexisting condition exclusion period is to be applied and that if full credit is indicated, then no notice seems necessary. The commenter further stated that it is too expensive to send a notice to each participant and that a notice should only be sent to those who have an exclusionary period.

Agency Response. The department believes that §21.1108(b) articulates that an issuer is only required to notify an individual to whom a preexisting condition is to be applied; however, the department has added clarifying language to subsection (a).

21.1110. A commenter asked what the difference was between "filing" an application or "receiving" an application.

Agency Response. The department recognizes there is an inconsistency in the use of these terms in the rules in that the definition of waiting period in §21.1104 utilizes the phrase "files a substantially complete application" and No. 9 of Form CCC utilizes the phrase "application was received." Since the definition of waiting period complies with federal rules, the department has changed No. 9 of Form CCC to be consistent with the language contained in the definition of waiting period.

For, with changes: Blue Cross and Blue Cross of Texas, Sierra Health Services, Inc., Insurance Alliance of America and Texas Association of Life and Health Insurers. Against: Provident American Insurance.

Subchapter K, §§21.1101-21.1110 are adopted under the Insurance Code Article 21.52G; the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the interim federal regulations implementing HIPAA promulgated by the Department of Treasury, Department of Labor, and the Department of Health and Human Services; and the Insurance Code Article 1.03A. The Insurance Code Article 21.52G, as added by the 75th Legislature, implements provisions regarding creditable coverage which were necessary to comply with the federal requirements contained in HIPAA. Under the Insurance Code Article 21.52G, the commissioner shall set standards for the certification of creditable coverage required to be provided by each issuer of a health benefit plan. Under the Insurance Code Article 21.52G, §5, the commissioner shall adopt rules as necessary to implement the Insurance Code Article 21.52G and related provisions of the Insurance Code and to meet the minimum requirements of federal law and regulations. The minimum requirements of federal law for creditable coverage are contained in HIPAA. Interim federal regulations implementing HIPAA have been promulgated by the Department of Treasury, Department of Labor, and the Department of Health and Human Services, 62 Fed. Reg. 16893. Portions of the federal regulations are included in these rules as necessary to meet the minimum requirements of federal law and regulations. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§21.1104. Form and Content of Written Certificate of Creditable Coverage.

(a) Except as otherwise provided in §21.1107 of this title (relating to Creditable Coverage Established Through Means Other than Written Certificate), a certificate of creditable coverage must be provided in writing.

(b) The written certificate of creditable coverage shall include the following:

(1) The date the certificate is issued;

(2) The name of the issuer of the health benefit plan that provided the coverage described in the certificate;

(3) The individual's or dependent's name for which the certificate of creditable coverage is issued;

(4) Any other information necessary for the health benefit plan providing the coverage specified in the certificate to identify the individual, including but not limited to, the individual's identification number under the health benefit plan;

(5) The name, address and telephone number of the third party administrator, plan sponsor, or issuer of the health benefit plan providing the certificate;

(6) A telephone number to call for further information regarding the certificate of creditable coverage, if different than paragraph (5) of this section;

(7) Either one of the following:

(A) the date any waiting period (or affiliation period, if applicable) began and the date creditable coverage began; or

(B) a statement indicating the individual has:

(i) 18 months of creditable coverage for individual coverage, or

(ii) 12 months of creditable coverage for group coverage; and

(8) The date creditable coverage ended, or a statement that creditable coverage is continuing.

(c) A carrier may use either:

(1) Form CCC provided at Figure 1 of §21.1110(b) of this title (relating to Form CCC) to comply with subsection (a) of this section , or

(2) a form that is substantially similar to Form CCC and complies with subsection (a) of this section, or

(3) the model contained in federal rules with modifications to reflect the applicable 12 or 18 month time period.

(d) If a certificate is provided under subsection (a) of §21.1103 of this title (relating to Timing and Issuance of a Written Certificate of Creditable Coverage to an Individual), the period that must be included on the certificate is the last period of continuous coverage, ending on the date coverage ceased.

(e) If an individual requests a certificate under subsection (b) of §21.1103 of this title (relating to Timing and Issuance of a Written Certificate of Creditable Coverage to an Individual), a certificate shall be provided for each period of continuous creditable coverage ending within the 24-month period, ending on the date of the request (or continuing on the date of the request). A separate certificate shall be provided for each such period of continuous creditable coverage.

(f) A certificate of creditable coverage may provide information on both an individual and the individual's dependents if the information is identical for each individual. If the information is not identical, the certificates of creditable coverage may be provided on one form if the form provides all the required information for each individual and separately states the information that is not identical.

(g) Delivery of a certificate of creditable coverage prior to the adoption of this subchapter shall be deemed to comply with this subchapter, provided the certificate complied with the federal regulations and properly reflected the creditable time period applicable to Texas residents.

§21.1106. Dependent Coverage.

(a) An issuer of a health benefit plan is required to use reasonable efforts to determine the information needed for a certificate of creditable coverage relating to dependent coverage.

(b) An issuer of a health benefit plan that cannot provide the names or addresses of dependents for providing a dependent's certificate of creditable coverage may satisfy the requirements of subsection (b)(3) of §21.1104 of this title (relating to Form and Content of Certificate of Creditable Coverage) until June 30, 1998, by providing the name of the individual covered by the issuer of the health benefit plan and specifying that the type of coverage described in the certificate is for dependent coverage (for example: family coverage or employee/spouse coverage).

(c) An issuer of a health benefit plan that issues a written certificate of creditable coverage that does not contain the name of a dependent must furnish a certificate within 21 days after the individual ceases to be covered under the policy.

(d) An issuer of a health benefit plan shall treat an individual as having furnished a certificate of creditable coverage showing the dependent status if the individual attests to the dependent status and the period of such dependency and the individual cooperates with the issuer's efforts to verify the dependent status.

§21.1107. Creditable Coverage Established Through Means other than Written Certificate.

(a) An individual may establish creditable coverage through means other than a written certificate of creditable coverage as provided in §21.1103 of this title (relating to Timing of Issuance of a Written Certificate of Creditable Coverage) if the accuracy of a written certificate is contested or if a written certificate is unavailable when needed by the individual. For example, the individual may make such a demonstration, including but not limited to, the following circumstances:

(1) an entity has failed to provide a certificate within the required time period;

(2) the coverage is for a period before July 1, 1996;

(3) the individual has an urgent medical condition that necessitates a determination of whether prior creditable coverage existed before the individual can deliver a certificate to the health benefit plan; or

(4) the individual lost a certificate he or she had previously received and is unable to obtain another certificate.

(b) No written certificate is required to be provided if the following conditions are met:

(1) an individual is entitled to receive a certificate;

(2) the individual requests that the certificate be sent to another issuer of a health benefit plan instead of to the individual;

(3) the issuer of the health benefit plan that would otherwise receive the certificate agrees to accept the information regarding creditable coverage through means other than a written certificate (for example, by telephone); and

(4) the issuer of the health benefit plan receives the information from the sending issuer of the health benefit plan within

the time periods required under §21.1103 of this title (relating to Timing of Issuance of a Written Certificate of Creditable Coverage to an Individual).

(c) Documents that may establish creditable coverage (and waiting or affiliation periods) in the absence of a written certificate of coverage, include but are not limited to, the following:

(1) explanations of benefit claims or other correspondence from a health benefit plan or issuer indicating coverage;

(2) pay stubs showing a payroll deduction for health benefit coverage;

(3) health benefit plan identification card;

(4) a certificate of coverage under a health benefit plan;

(5) records from medical care providers indicating health benefit plan coverage;

(6) third party statements verifying periods of coverage; and

(7) other relevant documents that evidence periods of health benefit plan coverage.

(d) An issuer of a health benefit plan shall take into account all information that it obtains or that is present on behalf of an individual to make a determination, based on the relevant facts and circumstances, whether an individual has creditable coverage and is entitled to offset all or a portion of any preexisting condition exclusion period.

(e) An issuer of a health benefit plan shall treat the individual as having furnished a written certificate of creditable coverage if the individual attests to the period of creditable coverage, the individual presents relevant corroborating evidence of some creditable coverage during the period, and the individual cooperates with the issuer of the health benefit plan's efforts to verify the individual's coverage.

(f) For purposes of subsection (e) of this section, cooperation includes providing, upon request, a written authorization for the issuer of the health benefit plan to request a certificate on behalf of the individual, and cooperating in efforts to determine the validity of the corroborating evidence and the dates of creditable coverage.

(g) An issuer of a health benefit plan may refuse to credit coverage if the individual fails to cooperate with the issuer's efforts to verify coverage. However, an issuer of a health benefit plan shall not consider an individual's inability to obtain a certificate to be evidence of the absence of creditable coverage.

(h) Creditable coverage may also be established through means other than documentation, such as by a telephone call from the health benefit plan or provider to a third party verifying creditable coverage.

(i) Nothing contained in this subchapter shall be construed to prohibit an issuer of a health plan from providing coverage on the contractual effective date and receiving premium for such coverage while creditable coverage information is being determined.

§21.1108. Notification of Creditable Coverage and Preexisting Condition Exclusion.

(a) After receipt of a written certification of creditable coverage as provided under §21.1103 of this title (relating to Timing of Issuance of a Written Certificate of Creditable Coverage to an Individual) or other means as provided under §21.1107 of this title (relating to Creditable Coverage Established Through Means other than Written Certificate), an issuer of a health benefit plan shall as soon as reasonably possible, not to exceed 30 days after receipt of the information regarding creditable coverage, make a determination regarding the individual's period of creditable coverage and notify the individual to whom a preexisting condition exclusion period is to apply of its determination in accordance with subsection (b) of this section.

(b) An issuer of a health benefit plan seeking to impose a preexisting condition exclusion shall disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual as soon as reasonably possible, not to exceed 30 days after receipt of the information regarding creditable coverage. The issuer of a health benefit plan shall disclose the basis for such determination, including the source and substance of any information on which the issuer relied. The issuer of a health benefit plan shall establish a grievance procedure in accordance with applicable law and shall notify the individual in writing of such grievance procedure. The issuer of a health benefit plan shall provide an individual with a reasonable opportunity to submit additional evidence of creditable coverage.

(c) An issuer of a health benefit plan may modify an initial determination of creditable coverage if the issuer determines the individual did not have the claimed creditable coverage, provided that:

(1) a notice of the reconsideration is provided to the individual; and

(2) until the final determination is made, the issuer of the health benefit plan, for purposes of approving access to medical services, acts in a manner consistent with the initial determination.

§21.1110. Form CCC.

(a) Form CCC relating to Insurance Code, Article 21.52G for certification and disclosure of coverage under a health benefit plan is included in subsection (b) of this section in its entirety and has been filed with the Office of the Secretary of State. The figure can be obtained from the Texas Department of Insurance, Life/Health Group, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104.

(b) Form CCC referenced in this subchapter is as follows:
FIGURE 1: 28 TAC §21.1110(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 1, 1997.

TRD-9716401
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: December 22, 1997
Proposal publication date: August 29, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resources and Conservation Commission

Chapter 101. General Rules

The commission adopts the repeal of existing §101.29, concerning Emissions Banking, new §101.29, concerning Emissions

Banking and Trading, and revisions to the State Implementation Plan regarding these adoptions. New §101.29 is adopted with changes to the proposed text as published in the June 10, 1997 issue of the *Texas Register* (22 TexReg 5641).

EXPLANATION OF ADOPTED RULES This rulemaking action expands the scope of the current banking program by allowing for the use of emission reduction credits (ERCs) to meet reasonably available control technology (RACT) requirements for the control of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) under Chapter 115, concerning Control of Air Pollution From Volatile Organic Compounds, and Chapter 117, concerning Control of Air Pollution From Nitrogen Compounds respectively, and by creating a new type of credit known as the discrete emission reduction credit (DERC).

Since 1993, §101.29 has allowed limited banking and trading of ERCs and mobile emission reduction credits (MERCs) to meet nonattainment new source review offset requirements. Due partly to limitations on use, banking activity has been almost non-existent. The ability to use credits for purposes of RACT compliance is intended to stimulate credit trading activity and provide more flexible alternatives for compliance by creating economic incentives for early, surplus emission reductions.

Additionally, this rulemaking will allow for the trading of a new type of credit, the DERC. In August 1995, the United States Environmental Protection Agency (EPA) introduced the concept of a DERC through a voluntary trading rule referred to as the Open Market Trading Rule (OMTR). Instead of promulgating the OMTR, EPA now intends to allow states to establish their own trading rules in accordance with EPA guidance. At this time the guidance has not been released, but agency staff has consulted with EPA in the development of this proposal to ensure consistency with the guidance once released.

ERCs and MERCs are generated by making enforceable, permanent emission reductions below the level required by state or federal regulations. The ERCs can then be banked and used later by the source which generated them, or they can be sold (traded) to another source and used to satisfy offset and other regulatory requirements. ERCs are created by eliminating future emissions, quantified during or before the period in which emission reductions are made, and are expressed in tons per year. By contrast, DERCs and mobile discrete emission reduction credits (MDERCs) are created during a discrete time period, quantified after the period in which emissions reductions are made, and expressed in tons. A MDERC is the counterpart of a MERC that has been quantified after the reduction has occurred.

Revisions are made to §101.29(c)(1)(E), regarding Geographic scope, to allow trading of ERCs or MERCs between ozone nonattainment areas for the purpose of nonattainment new source review (NNSR) offsets. Such trades will be allowed under the following conditions: 1) the ERC or MERC is used as an offset for a new or modified facility under Chapter 116, §116.150 (relating to New Major Source or Major Modification in Ozone Nonattainment Area); 2) the ERC or MERC was generated in an ozone nonattainment area which has an equal or higher nonattainment classification than the ozone nonattainment area of use; 3) a demonstration has been made showing that emissions from the ozone nonattainment area where the ERC or MERC is generated contribute to a violation of the national ambient air quality standard in the ozone nonattainment area of use; and 4) the user has obtained prior written approval of the executive director. Using the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) areas as an example, only reduction credits generated in HGA (classified severe) and used in BPA (classified moderate) would be allowed under the rule, assuming that all the above requirements are met. On the other hand, the reverse type of trading, with reduction credits generated in BPA and used in HGA, would not be allowed. This revision is being made because it provides additional flexibility in obtaining offsets, particularly in areas where reduction credits are in short supply. The revision requires a demonstration that emissions from the area of generation contribute to nonattainment of the ozone standard in the area of use, so reductions obtained in Houston may be beneficial to air quality in Beaumont, for example. The revision also ensures consistency with the Federal Clean Air Act (FCAA), §173(c)(1) which allows such offset trading between ozone nonattainment areas.

The availability of DERCs encourages early reductions of emissions, which may be used to meet RACT requirements. It is anticipated that with increased opportunities for credit use, there will be an economic incentive for sources at small businesses, not currently required by regulation to make reductions, to reduce emissions in order to create marketable credits.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, Section 2007.043. The following is a summary of that assessment. The specific purpose of the adoption is to provide an alternative flexible, cost-effective method of complying with certain agency regulations. Promulgation and enforcement of the rules as adopted will not affect private real property.

COASTAL MANAGEMENT PLAN The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission has reviewed this rulemaking action for consistency, and has determined that it is consistent with the applicable CMP goals and policies because the action provides a flexible, cost-effective alternative approach to rule compliance by allowing emissions banking and trading. This rulemaking action will not authorize any new sources of air emissions.

PUBLIC HEARING AND COMMENTERS A public hearing was held in Austin on July 8, 1997. Nine organizations and one individual submitted comments during the public comment period, which closed on July 10, 1997. Baker & Botts, Exxon Chemical Company (Exxon), Houston Lighting & Power (HL&P), and the Texas Chemical Council (TCC) supported the proposal. EPA generally supported the proposal, but submitted comments recommending various changes. Environmental Defense Fund (EDF), Sierra Club Lone Star Chapter (Sierra Club), Texas Center for Policy Studies, and an individual generally opposed the proposal.

EDF commented that there should be restrictions on the use of DERCs. EDF questioned how proposed §101.29(d)(4)(B)(v) and (vi) affect the restriction in §101.29(d)(4)(B)(ii), which disallows the use of DERCs to net out of nonattainment new source review (NNSR). The EDF stated that §101.29(d)(4)(B)(vi) needs clarification regarding the allowable emissions level, how it relates to emission increases that are considered significant, and the effect on the source's ability to use DERCs to avoid triggering review as a major modification under the Prevention of Significant Deterioration (PSD) program.

DERCs cannot be used to net out of either PSD or NNSR. DERCs are discrete credits, representing mass reductions only without regard to time. Since a netting exercise is triggered by a modification which will authorize a permanent source of emissions, it would be inappropriate to allow a source to provide a discrete number of tons to compensate for a unit that will be emitting pollutants for years to come. The referenced provision at §101.29(d)(4)(B)(v) is not related to the netting process, but rather provides for some limited emission increases for permitted sources on a temporary basis.

The intent of this rule provision was to allow only permitted sources in attainment areas to use DERCs to increase emissions beyond their permitted levels, and then only up to the PSD significance levels. The allowable emissions level is the maximum allowable rate represented in the permit. Since these increases may be authorized only on a temporary basis (for 12 months within any 24-month period), the source will not be avoiding PSD or NNSR requirements as a result of the rule. As suggested, the provision has been reworded for clarity.

EPA commented that the protocol section at §101.29(d)(2) should be completely reworked to include the language contained in EPA's draft Open Market Trading Guidance (OMTG) relating to EPA-approved protocols, and to specifically define all criteria.

Staff is agreeable to adding language requiring that EPA approval be sought if a source proposes to deviate from an existing EPA-approved protocol. However, staff does not agree that all criteria described in the OMTG are appropriate to include in the rule language. When the OMTG was written, there was a need to add safeguards, based on the expectation that a third party would be conducting the review. However, under the Texas program the New Source Review Permits Division (NSRPD) will be conducting these reviews. The NSRPD will use the same methodical approach for this program that is used in permit reviews. It is therefore inappropriate and unnecessary to include these criteria in the actual rule language. Since the criteria relate to how the commission will review the credits, and not to how the regulated community is affected by these rules, it is appropriate that the agreements between the state and the EPA should be developed through the State Implementation Plan (SIP) approval process. Any criteria listed in the OMTG that are not a part of the NSRPD's traditional procedures will be considered for inclusion in the narrative for the state's ozone SIP, and submitted to EPA at the next appropriate SIP submittal.

Exxon expressed concerns regarding the public disclosure requirements in the rule for DERCs and MDERCs, and commented that if additional requirements are imposed, the success of the program may be greatly compromised. The EPA, on the other hand, suggested that additional public information disclosure provisions be added stating that any credits created by relying on information marked "confidential" would subsequently be deemed ineligible as a credit. EPA also suggested that these requirements be extended to ERCs in addition to MDERCs and DERCs.

It is the agency's desire to share with the general public all information related to the amount of the emission credit, its intended use, and the types of pollutants involved. However, through years of permit reviews it has been recognized that certain proprietary business information is essential for the reviewing authority to assess the accuracy of the engineering calculations. Staff has revised §101.29(d)(1)(L) to allow for some confidential information to be submitted in support of DERC and MDERC claims, provided the essential elements of public concern, namely the nature and quantity of emissions, are disclosed. Staff also recognizes that program participation may be diminished by requiring public disclosure of all information submitted, and therefore is allowing the same types of information which could be submitted under the NSR Permitting Program to be submitted under the banking and trading program. A citizen may petition through the Public Information Act for information held confidential by the agency. The State Attorney General determines whether that information can be held confidential.

Unlike the new trading program for MDERCs and DERCs, the ERC trading program, used for offsetting emissions in nonattainment areas, is already well established. Since the ERC program began operation in March 1993, it has not encountered a problem with the handling of confidential documents. The ERC program is heavily intertwined with the NSR Permitting Program, which has accepted confidential information for a significant amount of time in its implementation of federal NSR. Therefore, staff believes that analysis of MDERCs and DERCs should be consistent with the approach used in evaluating engineering calculations in NSR permit applications. Staff does not concur that full public disclosure is appropriate for the analysis of ERCs.

EDF expressed concern over the lack of public participation in the process of creating and using DERCs, and the lack of accessibility to review documents.

As noted in §101.29(d)(1)(J), a Registry for all DERCs and MDERCs generated and traded will be maintained by the agency. This Registry will include all notices that are required to be submitted regarding generation, intent to use, and actual use. The Registry will be available for public review. Additionally, a listing of all credit transactions is currently available through the agency's Internet home page at http://www.tnrcc.state.tx.us/air/erc/embank.htm. Non-confidential information is available for public review at the agency's Austin office. Staff believes that sufficient public notice and document availability has been built into the DERC program.

EPA suggested that the state revise the proposed rule to include more explicit enforcement provisions.

The agency has statutory authority, pursuant to the Texas Water Code, Section 7.052, to assess administrative penalties of up to $10,000 per day for each rule violation. Additionally, pursuant to Texas Water Code, Section 7.102, civil penalties up to $25,000 per day for each violation are authorized if enforcement is made through district court. In many instances, a violation of the banking rule will also result in the violation of another rule. For example, if a user does not file a notice of intent to use prior to the use period and exceeds the permit allowable by the amount of the credit, there would be a permit violation in addition to the violation for failure to file notice. Depending upon the severity

of each rule violation, the commission will use its enforcement discretion to assess appropriate penalties within that authority. It would be inappropriate to set the amount of the penalty by rule. Language has been added to clarify that every day of source non-compliance may be considered a violation and that failure to maintain sufficient records is a rule violation.

Sierra Club questioned whether the state has fully assessed the impact of the rule as it pertains to environmental justice. Further, the Sierra Club suggests that the rule may not comply with Title VI of the 1964 Civil Rights Act.

Staff believes that this rule complies with Title VI of the 1964 Civil Rights Act. The use of this trading rule is expected to lower emissions and to improve overall air quality. However, additional language has been added to §101.29(d)(1)(H)(v) allowing the executive director, with commission approval, to discontinue trading if a localized area of concern develops as a result of the trading program. Further, new §101.29(d)(4)(B)(v)(III) has been added to reiterate the Texas Clean Air Act requirement that DERCs can not be used to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director. Additionally, if the executive director finds problems during the audit required by §101.29(d)(1)(M), appropriate measures will be taken to correct the problem.

An individual suggested that the agency's failure to hold a public hearing in Houston for this rule proposal was designed to ensure that oral public comments and public input would not occur, since people would not be able to take off from work easily and drive to Austin to attend the hearing held there.

Since this rule would apply statewide, the pubic hearing notice announcing the Austin hearing was published in newspapers in four major metropolitan areas of the state, as well as in the *Texas Register.* Regardless of whether any commenter attends the public hearing, written comments received within the 30-day comment period are considered on the same basis as comments received orally at the hearing. The commission met all of the applicable rules in setting the location of this hearing, and believes that the interest of public participation was met.

EDF commented that the agency must evaluate the impact of trading on air quality. EDF expressed concerns that there is no air quality analysis conducted by either the generator or user in connection with the creation or use of a DERC.

Certain safeguards are already built into the rule to protect against adverse impacts from trading. For example, emission increases from DERC use for permitted sources cannot exceed specified PSD de minimis levels. Program audits are required on a periodic basis to evaluate impacts on the attainment of national standards. The agency may implement measures, including the suspension of DERC trading, to correct any problems identified by the audit. Further, increases in emissions must demonstrate protectiveness by meeting the requirements of §106.261(3) or (4) (relating to Facilities (Emission Limitations)) or §106.262(3) (relating to Facilities (Emission and Distance Limitations)). Finally, language was added at §101.29(d)(4)(F)(viii) to allow the executive director to reject the use of DERCs by a source if the credit and use cannot be demonstrated to meet the requirements of the rule. This language will allow staff to request additional information where needed to make the demonstration, one of which is that the use will not cause or contribute to a condition of air pollution. It is the user's responsibility to provide sufficient information to demonstrate compliance with the rule requirements, and staff may request additional information if it is deemed necessary.

EDF requested in the DERC certification process that the agency address the potential problem of emission reductions, which were once surplus, becoming necessary for compliance as air quality standards change.

Emission reductions must be surplus at the time DERCs are generated, but not at the time they are used. This feature helps ensure market stability and confidence in the system, thus encouraging more reductions and banking of emissions. The amount of DERCs generated is limited to emissions during the period during which the reduction was created. The staff believes that early, voluntary reductions which are surplus at the time of creation provide a clear environmental benefit which outweighs effects from trading and subsequent tightening of emissions requirements.

EDF requested that the agency clarify whether and how it intends to use its general authority to terminate or limit DERC use as changes in air quality standards or conditions occur.

The rule gives the agency authority to limit, or even terminate, DERC trading if adverse air quality impacts are revealed. The executive director can also reject a use which would cause or contribute to a condition of air pollution. In the absence of such compelling reasons, however, DERCs are not affected by more stringent rule limitations as long as the DERCs are surplus at the time they were generated.

EDF stated that DERCs must be surplus at the time they are used, or attainment strategies may be jeopardized. EDF suggested that limits be placed on inter-temporal trading and the number of DERCs that can be used in a season. Sierra Club requested that the agency address polluters' ability to use emission reductions gained in previous years in order to allow emission increases now and in the future, especially in the ozone nonattainment and ozone near-nonattainment areas.

Although the timing of DERC use may add some uncertainty to the attainment planning process, there are many other factors such as growth and rule effectiveness which also contribute to uncertainty. The ability to use prior decreases to balance present or future increases in emissions is consistent with NSR permitting determinations of applicability of federal NSR. In the determination of whether a major source triggers a federal NSR permit, the source must evaluate a contemporaneous period and determine the net change of that period of time. Additionally, it is expected that not all reductions will be subsequently sold for use as increases, thereby creating an overall decrease in emissions. The staff does not believe that the risks from the timing of DERC use outweigh the potential benefits from early and innovative reductions, or the 10% additional credit required beyond the source's compliance obligation.

The rule requires periodic program audits to evaluate such criteria as the timing of credit generation and use, and the impact on attainment of national standards. As the result of the audit, the agency may undertake measures, including the possible suspension of DERC trading, to correct any problems encountered. To address the potential for localized areas of concern prior to the audit, additional language has been added to §101.29(d)(1)(H)(v) allowing the executive director to discontinue trading, with commission approval, if a localized area of concern develops as a result of trading.

Restrictions on the lifetime of a DERC were considered in the development of the trading rule; however, staff believed that if DERCs had an expiration date, companies might attempt to find uses for their own credits prior to the expiration date. Given the infinite life of a DERC, there is no pressure on the company to capitalize on the DERC. Consequently, some DERCs may never be used, resulting in an overall improvement in air quality.

Comments from EDF and an individual questioned whether the public health will be protected by allowing increases in emissions under this rule.

DERC uses are restricted to meeting the emission limitations of §106.261(3) or (4) or §106.262(3), which are designed to prevent unlimited increases without consideration of impacts. Considering that the agency's standard exemption rules already allow comparable emission increases without requiring any corresponding decreases, the banking and trading rule is actually more restrictive than the current standard exemption process. Additionally, the amount of the increase may not exceed specified significance levels. For these reasons, the staff believes that the rule represents a benefit, not a detriment, to the environment.

Exxon recommended that a definition of "area source" be added at §101.29(a), in order to include all sources which are eligible to generate and use credits, but which may be disqualified under the rule because they are not required to submit an emissions inventory.

The rule is intended to allow banking and trading for all point sources, including those smaller than the 10 ton per year threshold for reporting to the agency emissions inventory. These types of sources are traditionally included in the area source category by reporting and representing their emissions in the aggregate, using population-based or other "surrogate" emission factors. The emissions inventory already includes these smaller point sources, although they are not reported as individual emission points. Therefore, the staff has added language to clarify that for the purpose of this rule, "area source" refers to any source reported or represented in the agency emissions inventory under the area source category.

EPA commented that the rule fails to mention that the credits must be tied to an emissions inventory.

Section 101.29(c)(1)(B) states that " ... the emission point's annual emissions prior to the ERC application must have been reported in the 1990 emissions inventory or a subsequent emissions inventory." Furthermore, §101.29(d)(1)(B) states, "For a DERC to be creditable, the emission point's annual emissions prior to the emission reduction strategy must have been reported in the 1990 emissions inventory or a subsequent emissions inventory." Staff believes that these statements link the emissions to an emissions inventory, thus addressing EPA's concern.

It should be noted that when credits are used to cover all or part of a source's compliance obligation, the source must report its total actual emissions to the agency emissions inventory, rather than a lesser quantity of emissions which takes the credits into account.

An individual questioned the use of DERCs to meet RACT, stating that RACT is a very weak method of control technology. The individual questioned allowing sources to avoid RACT, and stated that the agency is allowing negative impacts on people's welfare and environment.

The staff disagrees with the statement that RACT represents a very weak method of control technology. Although the control efficiencies required by rule vary, some RACT rules obtain well above 95% reduction in emissions. RACT is defined as a level of control that is technically practicable and economically feasible. Therefore, RACT does not represent "maximum" emission reductions. A level of control more stringent than RACT is appropriate for new or modified sources, which are required to apply lowest achievable emission rate or best available control technology as part of the NSR process. The intent of this rule is to encourage early implementation of RACT and other control technology by providing incentives for early reduction.

Not only will the DERC program encourage the early implementation of control technology, but the use of DERCs requires an environmental contribution of 10%. Thus, overall emissions should be reduced by participation in this program. Emission increases under this program are allowed only to the extent that they are below de minimis values.

An individual questioned whether the reductions achieved through this program will be genuine, or whether the agency is creating paper reductions. The individual further questioned the method of calculation after the reduction has been made.

All requests for ERC or DERC evaluation receive thorough scrutiny by agency staff, which applies engineering expertise in reviewing all submitted documentation. This documentation may or may not include actual monitored data in all cases, although such data must be submitted in preference to other forms of documentation if it is available. All emissions estimation techniques must provide the basis for claimed emissions reductions, including records of activity levels, if appropriate. No credits will be approved for use which do not represent actual, surplus emission reductions.

The method of DERC quantification (retrospective and for a discrete period of time) is a departure from the traditional method of ERC quantification, which assumes that the reduction is continuous or ongoing. The baseline level of actual emissions must be known so that the DERC can be determined as surplus, but there is no requirement to quantify the level of emissions after the DERC has been generated. Actual monitoring results will be used if available, but there may be some cases where this data is not available and alternate methods must be used to quantify emission reductions. This does not undermine the validity of DERCs or the concept of DERC trades.

Sierra Club requested that the agency address the failure to require a cap on emissions from facilities, especially major sources.

In cap and trade systems (so-called "closed market systems"), a cap is placed on aggregate emissions. Total emissions under the cap are divided among participants in the form of "allowances," where each allowance equals one ton of allowable emissions. As the number of allowances declines over the years, each source must reduce emissions by the required amount until the end target year is reached. Excess allowances are the commodity used for emissions trading.

There are several reasons why the DERC rule (an open market system) was chosen in preference to a cap and trade system. First, in order to ensure that the system is effective, participation in a cap and trade system is mandatory for all affected sources. Both the state and industry prefer the greater

flexibility afforded by the DERC open market system, which is voluntary. Establishing the required NO_x and VOC reduction levels to attain the ozone standard is a long and complicated process, which would delay the implementation of a trading program for the state. In addition, uncertainties resulting from the new standards for ozone and particulates with an aerodynamic diameter of less than or equal to 10 microns (PM_{10}) would need to be factored into the trading program structure.

The Texas Center for Policy Studies expressed concern that DERCs have the potential to actually increase emissions from year to year, since they are temporary rather than permanent reductions.

Every DERC deposited in the bank represents emissions removed from the air. It is only when the DERC is used that these emissions are re-introduced to the air, with the stipulation that 10% over the amount used must be retired. Since deposited DERCs tend to accumulate over time, with only a percentage actually being used at any given time, the result would be a net decrease in emissions, not an increase. Additionally, while the decreases authorized under this program are temporary rather than permanent, authorized increases are temporary as well. Language has been added to §101.29(d)(4)(B)(v)(II) (formerly §101.29(d)(4)(B)(vi)), to assure that emissions increases are limited to one exceedance up to 12 months within any 24-month period. This language is consistent with that of §101.29(d)(4)(B)(v)(I), which pertains to VOC and NO_x.

EPA commented that the state should delete any statement in §§101.29, 117.540 and 117.570 which would allow the generation of MERCs using the Texas Accelerated Vehicle Retirement (AVR) and Texas Clean Fleet (TCF) programs, since credits cannot be generated using the methods referenced in these programs. EPA cannot approve the state AVR program because it uses a vehicle emission testing method that has changed. The AVR program planned to implement an inspection and maintenance (I/M) program utilizing the IM240 emission test which is no longer available. The Texas Clean Fuel Fleet program is not currently operational as a result of changes to the underlying legislation of the program which changed the criteria for vehicle accumulation.

Because the IM240 emission test is no longer available, it is correct that credits will not be available from the AVR program until the program is revised. Staff is in the process of revising the AVR and the TCF programs. When these revisions are complete, it will be possible for the state to generate and use credits under these programs. It is appropriate to allow those credits to be used once the programs are operational. In addition, although recent legislation requires revisions to the TCF program, current provisions will remain in place until the new provisions take effect. The state intends to rectify the problems EPA has identified with this program through revisions to Chapter 114 and the SIP.

An individual commented that it is inappropriate to allow MDERCs to be used at a stationary source, given the uncertainty and complexity associated with mobile emission calculations.

The agency is able to estimate the emissions from vehicles in a manner that is applicable for trades to stationary sources. Staff uses methodology provided by the EPA to calculate these reductions. The emission factors for use in the calculations are derived from EPA's Mobile Emission Factor Model (MOBILE5). Staff believes that since mobile sources also contribute to the nonattainment problems of an area, reductions from those sources should be encouraged as well.

Exxon recommended that the compliance margin requirement be removed from the rule, because the penalties associated with credit shortfalls provide adequate incentives for the users of DERCs or MERCs to acquire sufficient credits, thus ensuring that no shortfall occurs. Exxon commented that some activities for which excess credits would be used are so well understood or controllable that the excess is unnecessary. In those cases, this extra 5% margin would discourage some parties from participation in the program.

Staff does not believe that the additional 5% margin will result in a disincentive to participate in the program, since these credits may be resold after it is determined that they are not needed. In order to be consistent with the EPA's Draft OMTG, a compliance margin has been retained in the rule.

EPA suggested that the state may want to clarify whether allowable emissions or actual emission are used to calculate baseline emissions.

Staff has added the word "actual" to the definition of baseline emissions.

EDF and the Texas Center for Policy Studies expressed concerns about the implementation of the DERC system overlaid onto the existing ERC system. The EDF expressed concerns that the DERC program will result in an overall emission increase.

While some overlap between DERCs and ERCs exists, the creation of the DERC program should not result in an increase in overall emissions. Under existing permitting procedures, and under the §117.540 Phased RACT rule prior to this rule proposal, certain emissions increases could be allowed without the requirement for a comparable decrease. For example, under the current permitting program, a source may request an amendment to increase the emission rate from a facility. Presuming that the impacts and control technology are acceptable, the amendment would typically be granted. Under the DERC rule, the source will still be allowed to increase its emissions, but must retire an equivalent amount of reductions plus a 10% environmental contribution. It is anticipated that as DERCs are used, companies will contemplate further methods of creating DERCs, resulting in an overall decrease in emissions. The benefit to the source in participating in the banking/trading program is the short time frame required for authorization, compared to traditional permitting programs.

EDF expressed concerns that the certification process in the proposed rule does not enable the agency to determine if DERCs are in fact surplus.

The determination that credits are surplus will be made based on an assessment of the actual emissions, the applicable regulations, and the proposed reduction strategy. Because DERCs will be certified only when the reduction goes beyond the requirements of the rules, the reduction is surplus.

EPA stated that the agency must include specific references to modeling provisions for carbon monoxide, sulfur dioxide, and PM_{10} if reductions of emissions from those pollutants are to be considered in the generation of DERCs or MDERCs.

The rule limits the levels at which these trades may take place to below the threshold at which EPA would normally require

additional modeling and impact analysis. The rule allows increases of these pollutants to occur only to the extent that those increases are below the PSD significance levels. If the rule was revised as requested, this rule would make the use of DERCs more cumbersome than obtaining a permit amendment under the existing permitting structure. As currently written, §101.29(d)(4)(B)(v)(II) states that the user must demonstrate that there will be no adverse impacts from the use of DERCs at the levels requested. Staff believes that this requirement, in combination with the limitation of emission increases to below the PSD significance level, assures that these increases will not cause an adverse impact.

EPA commented that the state may want to consider adding a sentence to §101.29(d)(1)(G) specifying that, although ERCs may be converted to DERCs, the newly created credit must continue to meet all of the requirements imposed on DERCs.

Staff believes this is implicit in the rule. Allowing conversions from ERCs to DERCs does not allow circumvention of other rule requirements pertaining to the creditability of DERCs.

EPA suggested adding the following language to §101.29(d)(4)(B)(v): .. "a synthetic minor may not exceed its permit allowable on a temporary basis if doing so would make it a major source," in order to avoid any situation in which a synthetic minor would become a major source.

Language was added to §101.29(d)(4)(B)(vi), stating that DERCs may not be used to allow a source whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by such major source status.

EPA commented that the state should consider eliminating the executive director's authority to allow a user to exceed an allowable emission level, because this allows the executive director too much discretion.

The intent of this provision at §101.29(d)(4)(B)(v) is to provide a mechanism for denial of the DERC in the event that an unforeseen use is proposed. Staff has revised the rule language to clarify that this discretion enables the executive director to deny inappropriate uses, rather than providing an opportunity for the executive director to authorize unspecified actions.

EPA requested that the state include the requirement that credits must be purchased and held by a prospective user source prior to the time when the credits will be used for compliance, in order to prevent the user from deferring purchase of the credit until after the source has violated its emission limits.

Current rule language at §101.29(d)(4)(A)(i) requires that the user have ownership of the DERCs prior to use. Staff believes that the rule language addresses EPA's comment.

An individual commented that the agency needs to define terms such as "good engineering practices," and objected to the vagueness of phrases like "based on actual monitoring results, when available."

The term "good engineering practices" is commonly used in the fields of engineering and air pollution control. Staff expects that when actual monitoring has been performed, these results are available and additional monitoring would not be required for the sole purpose of demonstrating the validity of a credit. If the monitoring has been conducted, it is required to be submitted. Where monitoring has not been performed, standard methods of documentation and calculation will be used. At the executive director's discretion, sampling may be required as well.

Sierra Club and an individual expressed reservations about the ability to accomplish trading across areas.

The DERC portion of the rule allows VOC and NO_x increases in attainment areas to be countered by decreases in other areas. For nonattainment areas, the use of DERCs is restricted by requiring that emissions decreases must occur in the same nonattainment area as the increases. This restriction serves to protect nonattainment areas from being overwhelmed by increases without accompanying decreases within the same areas. The likely consequence of this restriction is that a greater amount of DERCs created in nonattainment areas will be used and removed from the system. The increases allowed by DERCs in attainment areas are restricted to values protective against adverse impacts. Those areas with the highest pollution levels will have the greatest amount of emissions available for reductions. Consequently, the greatest amount of reductions should be achieved where the reductions are most beneficial.

The use of DERCs is restricted to meeting the §106.261(3) or (4) or §106.262(3) emission and distance limitations, which limit increases allowed under §101.29(d)(4)(B)(iv). In fact, the banking and trading rule is actually more restrictive than the agency's existing standard exemption process, which allows such emission increases without requiring corresponding reductions.

An additional safeguard has been added to the rule at §101.29(d)(1)(H)(v), by providing that, with commission approval, the executive director may suspend trading in whole or in part where a localized area of concern has developed. If trading into an area begins to cause a problem, the executive director may suspend trading in that area. Additionally, the executive director may prohibit a use which would cause or contribute to a condition of air pollution.

Sierra Club commented that grandfathered sources should not be allowed to make use of the DERC rule, and questioned whether grandfathered sources could circumvent the permitting process through this rule.

This rule allows permitted facilities to exceed their allowable emission rates by strictly defined amounts, which must be offset by acquiring credits. Section 101.29(d)(4)(B)(v)(II) has been reworded to clarify that only permitted sources may exceed their allowables. Grandfathered sources could participate in creating DERCs by reducing emissions, but could not use DERCs to increase emissions. This rule encourages grandfathered and uncontrolled facilities to implement additional control technology early in order to create credits, and therefore does not promote circumvention of the permitting process.

South East Texas Regional Planning Commission requested that language be added to the rule to allow for trades of ERCs and MERCs from one ozone nonattainment area to another if it can be demonstrated that the emissions from the area of generation contribute to nonattainment of the ozone standard in the area of use and if the area of generation has an equal or higher nonattainment classification than the area of use. Such trades should be allowed pursuant to the Federal Clean Air Act Section 173(c)(1), 42 U.S.C. §7503(c)(1), subject to the approval of the executive director.

Section 101.29(c)(1)(E) has been revised to allow for the type of trade described in 42 U.S.C. §7503(c)(1). Staff has revised

the language submitted by the commenter to spell out the conditions under which a trade between nonattainment areas would be allowed.

30 TAC §101.29

STATUTORY AUTHORITY The repeal is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716207
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 23, 1997
Proposal publication date: June 10, 1997
For further information, please call: (512) 239–1970

♦ ♦ ♦

The new section is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

§101.29. Emission Credit Banking and Trading.

(a) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activity - The amount of activity at a source measured in terms of production, use, raw materials input, vehicle miles traveled (VMT), or other similar units that have a direct correlation with the economic output and emission rate of the source (i.e., mass emitted per unit of activity).

(2) Actual emissions - Actual emissions as of a particular date shall equal the total emissions during the selected time period, using the unit's actual daily operating hours, production rates, types of materials processed, stored, or combusted during the selected time period.

(3) Applicable emission point - The emission point that is either generating an emission reduction or using an emission reduction credit (ERC) or discrete emission reduction credit (DERC).

(4) Area source - Any source reported in the agency emissions inventory under the area source category.

(5) Baseline - Emissions that occur prior to an emission reduction strategy, considering all limitations required by applicable state and federal regulations. The baseline may not exceed the level of emissions reported in the 1990 emission inventory or a subsequent emissions inventory. For reduction strategies that exceed 12 months, the baseline is established after the first year of generation and is fixed for the life of the strategy. A new baseline is established for each emission reduction strategy.

(6) Baseline activity - The stationary source's actual level of activity averaged over any 24 consecutive month period during the 120 consecutive months which precede the emission reduction strategy or credit use period, using the source's actual daily activity level.

(7) Baseline emission rate - The stationary source's average rate of emissions per unit of activity using the unit's actual daily operating hours, production rates, or types of materials processed, stored, or combusted for any 24 consecutive month period during the 120 consecutive months which precede the emission reduction strategy or credit use period.

(8) Baseline emissions - The stationary source's total actual emissions, averaged for a 12-month period for ERCs or averaged for the discrete time period for DERCs, using the unit's actual daily operating hours, production rates, or types of materials processed, stored, or combusted for any 24 consecutive month period during the 120 consecutive months which precede the emission reduction strategy or credit use period. The baseline emissions may not exceed the level of emissions reported in the 1990 emissions inventory or a subsequent emissions inventory. For sources in existence less than 24 months, a shorter time period not less than 12 months may be considered by the executive director.

(9) Certified - Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(10) Curtailment - A temporary or partial reduction in activity level at any facility or mobile source.

(11) Discrete emission reduction credit (DERC) - A creditable emission reduction that is created during a discrete time period, quantified after the period in which emissions reductions are made, and expressed in tons.

(12) Discrete time period - The finite period of time in which a DERC is generated.

(13) Emission reduction credit (ERC) - A certified emission reduction that is created by eliminating future emissions, quantified during or before the period in which emission reductions are made, and expressed in tons per year.

(14) Emission reduction strategy - The method implemented to reduce the source's emissions beyond that required by state or federal law, regulation, or agreed order.

(15) Generation period - The discrete period of time over which a DERC is created.

(16) Generator - The owner or operator of a source that creates an emission reduction.

(17) Mobile discrete emission reduction credit (MDERC) - a credit that is surplus, generated by a mobile source as set forth in §114.200 of this title (relating to Accelerated Vehicle Retirement Program) or §114.201 of this title (relating to Mobile Emission Reduction Credit Program), and quantified after the period in which the reductions were made.

(18) Most stringent allowable emissions level - The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of

operation, or both), considering all limitations required by applicable state and federal regulations.

(19) Ozone season - The portion of the year when ozone monitoring is required to occur in a specific geographic area. The Houston/Galveston, Beaumont/Port Arthur, and El Paso nonattainment areas have a 12-month ozone season, whereas Dallas/ Fort Worth's ozone season runs from March 1 to October 31.

(20) Permanent - An emission reduction that is long lasting and unchanging for the remaining life of the source.

(21) Protocol - A replicable and workable method of estimating emission rates or activity levels used to calculate the amount of emission reduction generated or credits required.

(22) Quantifiable - An emission reduction that can be measured or estimated with confidence using replicable techniques.

(23) Real reduction - A reduction in which actual emissions are reduced.

(24) Shutdown - The permanent cessation of an activity producing emissions at a facility.

(25) Surplus - An emission reduction that is not otherwise required of a source by a state or federal law, regulation, or agreed order.

(26) Use period - The period of time over which the user source applies DERCs to an applicable emission reduction requirement.

(27) User - The owner or operator of a source that acquires and uses credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

(28) Use strategy - The compliance requirement for which DERCs are being used.

(b) Purpose. The purpose of this section is to allow the operator of a source to generate ERCs or DERCs by reducing emissions beyond the level required by local, state, and federal regulation and to allow the operator of a source to use these credits as offsets or as an alternative means of compliance with state regulations.

(c) Emissions credit banking of ERCs and mobile emission reduction credits (MERCs).

(1) General provisions.

(A) Applicable criteria pollutants. Reductions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) may qualify as ERCs or MERCs. In addition, reductions of carbon monoxide (CO) may qualify as MERCs. Reductions of other criteria pollutants are not creditable. Reductions of one criteria pollutant may not be used to meet the requirements of another pollutant, except at such time as urban airshed modeling demonstrates that one ozone precursor may be substituted for another.

(B) Emission reduction requirements. To be creditable as an ERC, an emission reduction must be enforceable, permanent, quantifiable through a replicable methodology, real, and surplus. The reduction must be surplus at the time it is created, as well as when it is used. The creditable reduction must have occurred after January 1, 1990 for VOC and NO_x, and the emission point's annual emissions prior to the ERC application must have been reported or represented in the 1990 emissions inventory or a subsequent emissions inventory. MERCs generated from reductions beyond those required by the Texas Clean Fleet Program must have occurred after January 1, 1992. MERCs generated from the accelerated retirement of high-emitting vehicles must have occurred after January 1, 1996. An emission reduction may be creditable as an ERC or DERC, but not both. A mobile source emission reduction may be creditable as a MERC or MDERC, but not both.

(C) Eligible sources. Participation in emissions credit banking is strictly voluntary. The following sources are eligible to generate ERCs:

(i) any stationary source;

(ii) any area source;

(iii) any mobile source registered in a designated ozone nonattainment area; and

(iv) any non-road mobile source or area source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(D) Life of an ERC or MERC. If an ERC is used prior to its expiration date, the ERC is effective for the life of the applicable user source except for an ERC which has been used for purposes of compliance with the provisions of §117.570 of this title (relating to Trading). An ERC is available for use for 120 months from the date of the emission reduction except to the extent that regulatory changes after the date of the reduction reduce the creditable amount or invalidate the entire reduction for affected emission points. Only a NO_x ERC that is used for compliance with Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) is subject to the applicable provisions of §117.570 of this title. The length of time a certified MERC is available for use is a function of the remaining vehicle miles of the mobile source, as determined in §114.200 of this title and §114.201 of this title. The Emissions Bank expiration date and useful life of the credit are calculated from the date the MERCs are certified.

(E) Geographic scope. Only emission reductions generated in ozone nonattainment areas are creditable. An ERC or MERC must be used in the nonattainment area in which it is generated unless:

(i) the ERC or MERC is used as an offset for a new or modified facility pursuant to §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area);

(ii) the ERC or MERC was generated in an ozone nonattainment area which has an equal or higher nonattainment classification than the ozone nonattainment area of use;

(iii) a demonstration has been made to show that the emissions from the ozone nonattainment area where the ERC or MERC is generated contribute to a violation of the national ambient air quality standard in the ozone nonattainment area of use; and

(iv) the user has obtained prior written approval of the executive director.

(F) Public information. Information regarding the banking or sale of ERCs or MERCs may be obtained from the Texas Natural Resource Conservation Commission (commission) Emissions Bank, which is the registry of all ERCs and MERCs generated and used.

(G) Authorization to emit. An ERC created under this section is a limited authorization to emit VOC and/or NO_x in accordance with the provisions of this section, the Federal Clean Air Act (FCAA), and the Texas Clean Air Act (TCAA), as well as

regulations promulgated thereunder. An ERC does not constitute a property right. Nothing in this section may be construed to limit the authority of the commission or the United States Environmental Protection Agency (EPA) to terminate or limit such authorization.

(H) Chapter 117 compliance. Any ERC or MERC for NO_x which is used to comply with the provisions of Chapter 117 of this title must meet all applicable provisions of §117.570 of this title and shall then be subject to all applicable provisions of §117.570 of this title in addition to the requirements of this section. The value of any NO_x ERC or MERC which is used to comply with Chapter 117 of this title may be reduced in accordance with §117.570(d) of this title.

(2) ERC and MERC generation.

(A) Methods of generation. ERC and MERCs may be generated using one of the following methods or any other method that meets the requirements of subsection (c)(1) of this section and is approved by the executive director:

(i) the permanent shutdown of a facility which causes a loss of capability to produce emissions;

(ii) the installation and operation of pollution control equipment which reduces emissions below the level required of the emission source;

(iii) a change in a manufacturing process which reduces emissions below the level required of the emission source;

(iv) the permanent curtailment in production, which reduces the source's capability to produce emissions;

(v) pollution prevention projects that produce surplus emission reductions;

(vi) an actual emission reduction resulting from the utilization of vehicles below the established emissions standard and/or the fleet percentages as required by the Texas Clean Fleet Program.

(vii) an actual emissions reduction resulting from the accelerated retirement of high-emitting vehicles.

(B) Calculation. The quantity of ERCs is determined by subtracting the source's new allowable emission limit (tons per year) from the emission source's baseline emissions. The source's new allowable emission limit equals the enforceable emission limit for the applicable emission point after the emission reduction strategy has been implemented. The quantity of MERCs must be calculated in accordance with §114.200 and §114.201 of this title.

(C) Certification and registration. Stationary sources with potential ERCs may submit an ERC application to the Emissions Bank. Applications for total emission reductions, VOC and NO_x combined, of less than 10 tons per year (TPY) will be registered in the Emissions Bank and subjected to a review upon use. Applications for 10 TPY or greater will be subjected to a review in accordance with paragraph (3)(D) of this subsection to determine the creditability of the reductions. Reductions determined to be creditable will be certified by the executive director and an ERC certificate will be issued to the owner. MERCs will be certified by the Emissions Bank for any emission reduction which has been registered in accordance with the specific requirements of §114.200 and §114.201 of this title. A MERC certificate will be issued by the executive director which indicates the total amount of certified emission reduction credits, the quantity available on an annual basis, and the date upon which the last annualized emission reduction expires. The applicant will be notified in writing if the executive director denies the ERC application. The applicant may submit a revised application at any time.

(D) Protocols. The amount of ERCs in TPY will be determined and certified based on actual monitoring results, when available, or otherwise calculated using good engineering practices including calculation methodologies in general use in new source review (NSR) permitting. The executive director shall have the authority to inspect and request information to assure that the emissions reductions have actually been achieved. MERCs will be determined and certified using the methodologies provided in §114.200 and §114.201 of this title.

(E) ERC bank deposits. All ERCs are deposited in the Emissions Bank and reported as available credits by the Emissions Bank until they are withdrawn or expire.

(F) Enforcement. ERCs generated by a stationary emission source will be made enforceable by:

(i) amending an NSR permit to reflect the emission reduction and set a new maximum allowable emission limit;

(ii) voiding an NSR permit when an emission source has been shut down;

(iii) registering on a PI-8 form the emission reduction and the new maximum allowable emission limit for any standard exemption facility; or

(iv) an agreed order which sets a new maximum allowable emission limit for a facility which is not required to have a permit or qualify for a standard exemption.

(3) ERC and MERC use.

(A) Use of ERCs. ERCs may be used as:

(i) offsets for a new source or major modification to an existing source;

(ii) mitigation offsets for action by federal agencies under §101.30 of this title;

(iii) netting by the original applicant, if not used as an offset to meet a regulatory requirement or relied upon in the issuance of an NSR permit; or

(iv) an alternative means of compliance with VOC and NO_x reduction requirements as provided in Chapter 115 of this title (relating to the Control of Air Pollution from VOCs) and Chapter 117 of this title.

(B) Use of MERCs. MERCs can only be used for the following purposes:

(i) extending a compliance deadline for up to the life of the credit to the extent allowed in any provision of Chapter 115 of this title and §117.540 of this title (relating to Phased Reasonably Available Control Technology (RACT));

(ii) complying with fleet requirements to the extent allowed by the Texas Clean Fleet Program Requirements for Motor Vehicle Fleets;

(iii) providing offsets for a new major source or major modifications. When MERCs are used for purposes of this clause, offsets will be required, upon the expiration of the MERCs, through internal emission reductions (netting) or the purchase of additional credits as allowed under this section, or the facility will be required to shut down the emission source.

(C) Calculation. The calculation of the number of ERCs needed by the user for offsets or for compliance with Chapter 115 or Chapter 117 of this title are as follows:

(i) for ERC usage as offsets, the method for determining the number of ERCs needed by the user for offsets is provided in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area); or

(ii) for ERC usage for compliance with Chapter 115 or Chapter 117 of this title, the number of ERCs needed equals the emission reduction that would have been generated if the affected emission point had implemented the respective requirements of Chapter 115 or Chapter 117 of this title, plus an additional 10% to be retired as an environmental contribution.

(D) Review schedule. The following applies to ERCs which are to be used for compliance with the requirements of Chapter 115 or Chapter 117 of this title. The user must submit a notice of intent to use, at least 90 days prior to the planned utilization of the ERC. ERCs may be utilized only after the executive director grants approval of the notice of intent to use. The executive director shall have 30 days from date of receipt to determine if the registration application is complete. The executive director shall have 90 days from date of receipt to approve, modify, or deny the registration or 60 days after determination of completeness, whichever is later.

(E) Transfer. ERCs and MERCs are freely transferable in whole or in part, and may be traded or sold to a new owner anytime before the expiration date of the ERC. The Emissions Bank must be notified no later than 30 days after the transfer of any credits to another party. The old certificate must be submitted to the Emissions Bank. The executive director will issue a new certificate to the ERC purchaser reflecting the ERCs purchased by the new owner, and a revised certificate to the ERC seller showing any remaining ERCs available to the original owner.

(F) Withdrawal. ERCs may be withdrawn from the Emissions Bank by the owner at any time prior to the expiration date of the credit and may be held by the owner. ERCs may still be used by the original owner for netting purposes after the ERCs have expired, as provided in §116.150 of this title.

(G) Recording of ERC use.

(i) ERCs and MERCs used as offsets must be included in the user's new source review permit application. The original ERC or MERC certificate must be submitted by the permit applicant to the executive director before the permit is issued.

(ii) Use of ERCs or MERCs for purposes other than those specified in clause (i) of this subparagraph may not commence until the user has received approval from the executive director. The user must also keep a copy of the ERC certificate, the notice, and all backup data on site for a minimum of five years.

(iii) If the executive director denies the stationary source's use of ERCs or MERCs, any person affected by the executive director's decision may file a motion for reconsideration. Notwithstanding the applicability provisions of §50.31(c)(7) of this title (relating to Purpose and Applicability), the requirements of §50.39 of this title (relating to Motion for Reconsideration) may apply. However, only a person affected may file a motion for reconsideration.

(d) Emission credit trading of DERCs and MDERCs.

(1) General provisions.

(A) Applicable pollutants. Reductions of VOCs, NO_x, CO, sulfur dioxide (SO_2), and particulates with an aerodynamic diameter of less than or equal to a nominal 10 microns (PM_{10}) may qualify as DERCs or MDERCs as appropriate. Reductions of other criteria pollutants are not creditable. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, except at such time as urban airshed modeling demonstrates that one ozone precursor may be substituted for another.

(B) Discrete emission reduction requirements. To be creditable as a DERC or MDERC, an emission reduction must be real, properly quantified, and surplus at the time the emission reduction is generated. For a DERC to be creditable, the emission point's annual emissions prior to the emission reduction strategy must have been reported or represented in the 1990 emissions inventory or a subsequent emissions inventory. An emission reduction may be credited as either an ERC or DERC, or as a MERC or MDERC.

(C) Credit measurement. A DERC or MDERC is equivalent to one ton of emissions of one pollutant. DERCs and MDERCs may not be broken down into units smaller than one ton.

(D) Start date for discrete emission reductions. An emission reduction must be generated after the effective date of this section. However, reductions made after November 15, 1992 (January 1, 1992 if credits are generated from reductions beyond those required by the Texas Clean Fleet Program or January 1, 1996 if credits are generated from the accelerated retirement of high-emitting vehicles and before the effective date of this section) may be creditable if the reduction is surplus on the effective date of this section. Sources that generated emission reductions prior to the effective date of this section must submit a notice of generation within six months of the effective date of this section or the reductions will not be creditable.

(E) Eligible sources. Participation in emission credit trading is strictly voluntary. Stationary sources and any non-road mobile source or area source associated with actions by federal agencies under §101.30 of this title are eligible to generate and use DERCs, if there are no permits under the same commission account number that contain a condition or conditions precluding the use of DERCs. Mobile sources are eligible to generate MDERCs. Stationary and area sources may use MDERCs if there are no permits under the same commission account number that contain a condition or conditions precluding the use of DERCs or MDERCs.

(F) Life of a DERC or MDERC. A DERC or MDERC is available for use after the notice of generation has been received by the commission Registry in accordance with subparagraph (J) of this paragraph, and may be used anytime thereafter.

(G) Converting ERCs to DERCs. Certified ERCs and MERCs banked in the Emissions Bank prior to the effective date of this section may be converted to DERCs or MDERCs, respectively, if the emission reduction is surplus on the date the ERCs or MERCs are to be converted, the ERCs or MERCs have not expired, and the reduction meets the requirements of subsection (c)(3)(A) of this section. The conversion of ERCs to DERCs or MERCs to MDERCs, must occur within six months of the effective date of this section. A whole ERC, not a portion, must be converted to a DERC and may not be converted back to an ERC.

(H) Geographic scope. Emission reductions generated in the state of Texas may be creditable and used in the state with the following limitations:

(i) VOC and NO_x reductions generated in an ozone attainment area may be used in any county or portion of a county designated as attainment or unclassified, but may not be used in an ozone nonattainment area.

(ii) VOC and NO_x reductions generated in an ozone nonattainment area may be used either in the same ozone

nonattainment area in which they were generated, or in any county or portion of a county designated as attainment or unclassified.

(iii) VOC and NO_x reductions generated in an ozone nonattainment area may not be used in any other ozone nonattainment area.

(iv) CO, SO_2, and PM_{10} must be used in the same metropolitan statistical area in which the reduction was generated.

(v) The trading of DERCs or MDERCs may be discontinued by the executive director in whole or in part and in any manner, with commission approval, as a remedy for problems resulting from trading in a localized area of concern.

(I) Ozone season. In areas having an ozone season of less than 12 months, VOC and NO_x credits generated outside the ozone season may not be used during the ozone season.

(J) The commission Registry. All required notices of DERC and MDERC generators and users must be submitted to the Registry. A notice submitted by a generator or user will automatically be posted to the Registry. The Registry will assign a unique number to each ton of emission reductions generated. The Registry will maintain current listings of all credits available or used for each ozone nonattainment area. One combined listing for all the counties or portions of counties designated as attainment or unclassified will be provided by the Registry.

(K) Recordkeeping. The generator must maintain a copy of all notices and backup information submitted to the Registry for a minimum of five years following the completion of the generation period. The user must maintain a copy of all notices and backup information submitted to the Registry for a minimum of five years following the completion of the use period. Other relevant reference material or raw data must also be maintained on site by the participating sources. The user must also maintain a copy of the generator's notice and backup information for a minimum of five years after the use is completed. Failure to keep sufficient records is a violation of this rule.

(L) Public information. All information submitted with a notice or report regarding the nature and quantity of emissions associated with the use or generation of DERCs or MDERCs is public information and will not be considered confidential. Any claim of confidentiality not meeting this requirement, or failure to submit all information, may result in the rejection of the emission reduction. All non-confidential notices and information regarding the generation, use, and availability of DERCs or MDERCs may be obtained from the Registry.

(M) Program audits.

(i) No later than three years after the effective date of this section, and every three years thereafter, the executive director will audit this program.

(ii) The audit will evaluate the timing of credit generation and use, the impact of the program on the state's attainment demonstration and the emissions of hazardous air pollutants (HAPs), the availability and cost of credits, compliance by the participants, and any other elements the executive director may choose to include.

(iii) The executive director will recommend measures to remedy any problems identified in the audit. The trading of DERCs or MDERCs may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(iv) The audit data and results will be completed and submitted to EPA and made available for public inspection within six months after the audit begins.

(N) Authorization to emit. A DERC or MDERC created under this section is a limited authorization to emit the specified pollutants in accordance with the provisions of this section, the FCAA and the TCAA as well as regulations promulgated thereunder. A DERC or MDERC does not constitute a property right. Nothing in this section should be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(O) Program participation. The executive director has the authority to prohibit a company from participating in the emission credit trading of DERCs or MDERCs either as a generator or user, if the executive director determines that the company has violated the requirements of the program or abused the privileges provided by the program.

(P) Chapter 117 compliance. Any DERC or MDERC for NO_x which is used to comply with the provisions of Chapter 117 of this title must meet all applicable provisions of §117.570 of this title and shall then be subject to all applicable provisions of §117.570 of this title in addition to the requirements of this section. The value of any NO_x ERC which is used to comply with Chapter 117 of this title may be reduced in accordance with §117.570(d) of this title.

(2) Protocols.

(A) All source categories must use an EPA approved protocol if one exists for the applicable source. If the source wants to deviate from an EPA approved protocol, EPA approval is required before the protocol can be used.

(B) If an approved protocol does not exist the following applies:

(i) The amount of DERCs in tons will be determined and certified based on actual monitoring results, when available, or otherwise calculated using good engineering practices including calculation methodologies in general use in NSR permitting. The source must collect relevant data sufficient to characterize the process emissions of the affected pollutant and the process activity level for all representative phases of source operation during the period under which DERCs are created or used.

(ii) The amount of MDERCs will be quantified in accordance with §114.200 or §114.201 of this title as appropriate. For the purposes of quantifying MDERCs, the term "VMT" represents the actual vehicle miles traveled over the time period for which credit is desired, and the term "n" represents the time period over which the credit is generated.

(3) DERC generation.

(A) Generation limitations. A DERC or MDERC may be generated by any strategy that reduces a source's emission rate below its baseline, except for the following:

(i) curtailing an activity at a source;

(ii) modification or discontinuation of any activity that is otherwise in violation of a federal, state, or local law;

(iii) emissions reductions required to comply with any provision under Title I of the FCAA regarding tropospheric ozone, or Title IV of the FCAA regarding acid rain;

(iv) emission reductions of hazardous air pollutants, as defined in the FCAA §112, from application of a standard promulgated under the FCAA §112;

(v) emission reductions credited or used under any other emissions trading program;

(vi) emission reductions occurring at a source which received an alternative emission limitation to meet a state RACT requirement, except to the extent that the emissions are reduced below the level that would have been required had the alternative emission limitation not been issued; and

(vii) emission reductions at a facility with a flexible permit, unless the reductions are made permanent and enforceable or the generator can demonstrate that the emission reductions were not used to satisfy the conditions for the facilities under the flexible permit.

(B) Calculation of emission reduction generated.

(i) An emission reduction is generated when the operator of an emission source undertakes a strategy to reduce the source's emission rate per unit of activity below its baseline.

(ii) For all emission reduction strategies, except shutdowns and mobile source emission reduction strategies, the emission reduction is calculated as follows:
Figure 1: 30 TAC §101.29(d)(3)(B)(ii)

(iii) The amount of DERCs or MDERCs generated must be rounded down to the nearest ton.

(iv) For shutdown emission reduction strategies, the quantity of emission reduction generated is equivalent to the baseline emissions.

(v) The generation period for a shutdown is ten years. Shutdown DERCs must be generated and noticed to the Registry on an annual basis.

(vi) If the generator exceeds the allowable emission limit for the applicable facility, no DERC will be generated.

(vii) If the generator uses the emission reduction to net out of nonattainment new source review or increases emissions at another emission point within the property by an amount equal to or greater than the emission reduction generated, no DERC will be generated.

(C) Notice of generation. A notice of generation and generator certification must be submitted to the Registry in accordance with the following requirements if the reduction is to be creditable and marketable:

(i) the notice must be submitted no later than 90 days after the generation activity has been completed, or no later than 90 days after the completion of the first 12 months of generation, if the generation period exceeds 12 months, and every 12 months thereafter for each subsequent year of generation, whichever is sooner.

(ii) The notice for a stationary or area source generator must include the following information for each pollutant reduced at each applicable emission point:

(I) the name, address, county, telephone number, contact person, permit or standard exemption numbers, account number of the generator, and the unique facility identification number (FIN) and emission point number (EPN) of the applicable emission points,

(II) the name of the owner and/or operator of the generator source,

(III) the generation period,

(IV) a complete description of the generation activity,

(V) for shutdown emission reduction strategies, an explanation as to whether production shifted from the shut down facility to another facility in the same nonattainment area,

(VI) the amount of DERCs generated,

(VII) for VOC reductions, a list of the specific compounds reduced,

(VIII) the baseline emission rate and baseline total emissions for each applicable pollutant and emission point,

(IX) the most stringent emission rate and the most stringent emission level for the applicable emission point, considering all the applicable regulatory requirements,

(X) a complete description of the protocol used to calculate the emission reduction generated,

(XI) the actual calculations performed by the generator to determine the amount of DERCs generated, and

(XII) a statement that the emission reductions on which the DERCs are based are real, surplus, and not based on an emission reduction strategy prohibited in subsection (c)(3)(A) of this section.

(iii) The notice for a mobile source generator must include information as required to verify the credit calculation. A mobile source generator shall also indicate in his notification whether credits have been banked under §114.201 of this title.

(iv) The notice must include a certification of generation, which shall contain certification under penalty of law by a responsible official of the generator source of truth, accuracy, and completeness. This certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(v) If a generator submits a notice late, the creditable portion of the reduction will be reduced at the discretion of the executive director.

(vi) The generator must provide a complete copy of the Notice of Generation, Certification, and backup information to the user.

(vii) The generator is responsible for maintaining current information in the notice of generation after it is submitted to the Registry, such as address changes, or a change of ownership when the credits are sold or transferred.

(D) Compliance burden and enforcement.

(i) The generator is responsible for assuring that the DERCs or MDERCs generated are real, surplus, and quantified accurately.

(ii) The notice of generation will be reviewed and the credits certified by the executive director at the time the credits are used. Certification by the executive director does not relieve the generator of any responsibilities.

(4) DERC and MDERC use.

(A) Use requirements.

(i) The user must have ownership of a sufficient amount of DERCs or MDERCs before the use period for which the specific DERCs or MDERCs are to be used.

(ii) The user must hold sufficient DERCs or MDERCs to cover the user's compliance obligation at all times.

(iii) The user shall acquire additional DERCs or MDERCs during the use period if the user determines that he does not possess enough DERCs or MDERCs to cover the entire use period. The user must acquire additional credits as allowed under this section prior to the shortfall, or the user will be in violation of this section.

(iv) Source operators may acquire and use only DERCs or MDERCs listed on the Registry.

(B) Use limitations. A DERC or MDERC may be used to meet a regulatory requirement or demonstrate compliance, except as prohibited by this paragraph. A DERC or MDERC may not be used:

(i) before it has been acquired by the user;

(ii) for netting to avoid the applicability of federal and state NSR requirements;

(iii) to meet FCAA requirements for:

(I) new source performance standards under §111;

(II) lowest achievable emission rate standards under §173(a)(2);

(III) best available control technology standards under §165(a)(4);

(IV) HAP standards under §112, including the requirements for maximum achievable control technology;

(V) standards for solid waste combustion under §129;

(VI) requirements for a vehicle inspection and maintenance program under §182(b)(4) or (c)(3);

(VII) ozone control standards set under §183(e) and (f);

(VIII) clean fueled vehicle requirements under §246;

(IX) motor vehicle emissions standards under §202;

(X) standards for nonroad vehicles under §213;

(XI) requirements for reformulated gasoline under §211(k);

(XII) requirements for Reid vapor pressure standards under §211(h) and (i);

(iv) to allow an emissions increase of an air contaminant that exceeds the limitations of §106.261(3) or (4) or §106.262(3) of this title (relating to Facilities (Emission Limitations), and Facilities (Emission and Distance Limitations)) except as approved by the executive director;

(v) to exceed any allowable emission level, except as follows:

(I) In ozone nonattainment areas, permitted facilities may use DERCs and MDERCs to exceed permit allowables by no more than 25 tons for NO_x or 5 tons for VOC in a 12-month period as approved by the executive director. This use is limited to one exceedance up to 12 months, within any 24-month period per use strategy. The use must extend beyond a 24-hour period;

(II) At permitted facilities in counties or portions of counties designated as attainment or unclassified, DERCs and MDERCs may be used to exceed permit allowables by values not to exceed the prevention of significant deterioration significance levels as provided in 40 Code of Federal Regulations §52.21(b)(23), as approved by the executive director prior to use. This use is limited to one exceedance up to 12 months, within any 24-month period per use strategy. The user must demonstrate that there will be no adverse impacts from the use of DERCs or MDERCs at the levels requested.

(vi) to authorize a source whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by such major source status; or

(vii) to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director.

(C) Use of DERCs or MDERCs for NSR offsets.

(i) The user must obtain the executive director's approval prior to the use of specific DERCs or MDERCs to cover, at a minimum, one year of operation of the new or modified source in the NSR permit.

(ii) The NSR permit must contain an enforceable requirement that the source obtain at least one additional year of offsets before continuing operation in each subsequent year.

(D) Chapter 117 compliance. Any DERC or MDERC for NO_x which is used to comply with the provisions of Chapter 117 of this title must meet all applicable provisions of §117.570 of this title and shall then be subject to all applicable provisions of §117.570 of this title in addition to the requirements of this section.

(E) Calculation of DERCs or MDERCs needed.

(i) The amount of DERCs or MDERCs needed to demonstrate compliance or meet a regulatory requirement is calculated as follows:
Figure 2: 30 TAC §101.29(d)(4)(E)(i)

(ii) The amount of DERCs or MDERCs needed must be rounded up to the nearest ton.

(iii) The user must possess 10% more DERCs or MDERCs than are needed, as calculated in clause (i) of this subparagraph, to ensure that the source's environmental contribution retirement obligation will be met in accordance with subparagraph (G)(i) of this paragraph.

(iv) If the amount of DERCs or MDERCs needed to meet a regulatory requirement or to demonstrate compliance is greater than 10 tons, an additional 5% of the DERCs or MDERCs needed, as calculated in clause (i) of this subparagraph, must be acquired to ensure that sufficient DERCs are available to the user with an adequate compliance margin.

(v) The amount of DERCs or MDERCs needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user must also purchase and retire enough DERCs or MDERCs to meet the offset ratio requirement in the user's ozone nonattainment area. The user must purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher.

(vi) DERCs or MDERCs that are not used during the use period are surplus and remain available for transfer or use by the holder. In addition, any portion of the calculated environmental contribution not attributed to actual use is also available.

(F) Notice of intent to use. A notice of intent to use must be submitted to the Registry in accordance with the following requirements:

(i) DERCs or MDERCs may be used only after the user has submitted the notice to the Registry;

(ii) the notice must be submitted at least 45 days prior to the first day of the use period if the generator is a stationary source, and 90 days if the generator is a mobile source, and every 12 months thereafter for each subsequent year if the use period exceeds 12 months;

(iii) a copy of the notice must also be sent to the Federal Land Manager 30 days prior to use if the user is located within 100 kilometers of a Class I area.

(iv) the notice for a stationary or area source user must include the following information for each use:

(I) the name, address, county, telephone number, contact person, permit or standard exemption numbers, and account number of the user, the unique FIN and EPN identification numbers for each emission point,

(II) the name of the owner and/or operator of the user source,

(III) the applicable state and federal requirements that the DERCs will be used to comply with and the intended use period,

(IV) the amount of DERCs needed,

(V) the baseline emission rate, activity level, and total emissions for the applicable emission points,

(VI) the expected emission rate, activity level, and total emissions for the applicable emission points,

(VII) the most stringent emission rate and the most stringent emission level for the applicable emission points, considering all applicable regulatory requirements,

(VIII) a complete description of the protocol used to calculate the amount of DERCs needed,

(IX) the actual calculations performed by the user to determine the amount of DERCs needed,

(X) the date on which the DERCs were acquired or will be acquired,

(XI) the DERC generator and the serial numbers of the DERCs acquired or to be acquired,

(XII) the price of the DERCs acquired or the expected price of the DERCs to be acquired, and

(XIII) a statement that due diligence was taken to verify that the DERCs were not previously used, that the DERCs were not generated as a result of actions prohibited under this regulation, and that the DERCs will not be used in a manner prohibited under this regulation.

(v) the notice for a mobile source user must include information as required in §114.200 and §114.201 of this title.

(vi) the notice must include a certification of use, which must contain certification under penalty of law by a responsible official of the user source of truth, accuracy, and completeness. This certification must state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(vii) a user may submit a notice late in the case of an emergency, but the notice must be submitted before the DERCs can be used. The user must include a complete description of the emergency situation in the notice of intent to use. All other notices submitted less than 45 days prior, or 90 days prior for a mobile source, to use will be considered late and in violation.

(viii) the user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating source in the notice of intent to use. The executive director will certify or reject the generating source's emission reduction within 14 days of receiving the notice of intent to use from the user if the generator is a stationary source and 30 days if the generator is a mobile source. If the generator's credits are rejected or the notice of generation is incomplete, the use of DERCs by the user may be delayed by the executive director. The user cannot use any DERCs that have not been certified by the executive director. The executive director may reject the use of DERCs by a source if the credit and use cannot be demonstrated to meet the requirements of this section.

(G) Actual DERC or MDERC use.

(i) The user shall calculate:

(I) the amount of DERCs or MDERCs used, including the amount of DERCs or MDERCs retired to cover the environmental contribution associated with actual use; and

(II) the amount of DERCs or MDERCs not used, including the amount of excess DERCs or MDERCs that were purchased to cover the environmental contribution but not associated with the actual use, and available for future use.

(ii) A report of use must be submitted to the Registry in accordance with the following requirements:

(I) a report of use must be submitted within 90 days after the end of the use period;

(II) the report must be submitted within 90 days of the conclusion of each 12-month use period, if applicable;

(III) the report is to be used as the mechanism to update or amend the notice of intent to use and must include any information different from that reported in the notice of intent to use, including but not limited to the following items:

(-a-) purchase price of the DERCs or MDERCs obtained prior to the current use period,

(-b-) the actual amount of DERCs or MDERCs possessed during the use period,

(-c-) the actual emissions during the use period for VOC and NO_x;

(-d-) the actual amount of DERC or MDERCs used;

(-e-) the actual environmental contribution; and

(-f-) the amount of DERC's or MDERCs available for future use.

(iii) The user is in violation of this section if the user submits the report of use later than the allowed 90 days following the conclusion of the use period.

(iv) The Registry shall not contain proprietary information.

(H) Compliance burden and enforcement.

(i) The user is responsible for assuring that a sufficient quantity of DERCs or MDERCs is acquired to cover the applicable source's emissions for the entire use period. The user should ensure that the credits are real, surplus, and properly quantified DERCs or MDERCs for purchase.

(ii) The user is in violation of this section if the user does not possess enough DERCs or MDERCs to cover the credit need for the use period. If the user possesses an insufficient quantity of DERCs or MDERCs to cover its compliance need, the user will be out of compliance for the entire use period, unless the user can demonstrate otherwise. Each day the user is out of compliance may be considered a violation.

(iii) Users may not transfer their compliance burden and legal responsibilities to a third party participant. Third party participants may only act in an advisory capacity to the user.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716206
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 23, 1997
Proposal publication date: June 10, 1997
For further information, please call: (512) 239–1970

♦ ♦ ♦

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter J. Administrative Provisions

Emissions Trading

30 TAC §115.950

The commission adopts new §115.950, concerning Emissions Trading, in Subchapter J (Administrative Provisions), and revisions to the State Implementation Plan without changes to the proposed text as published in the June 10, 1997, issue of the *Texas Register* (22 TexReg 5651).

EXPLANATION OF ADOPTED RULE Emissions banking and trading is an innovative approach to regulatory compliance, allowing a source to meet emission control requirements by purchasing and using credits generated by another source in the same ozone nonattainment area which has reduced its emissions below the level required by rule or permit. Prior to this adoption, banking and trading were not an option to meet the Chapter 115 volatile organic compound (VOC) control requirements, with the exception of limited intrasource trading available under §§115.910-115.916, regarding Alternate Means of Control. This new §115.950 enables sources to meet the VOC emission control requirements of Chapter 115, in whole or in part, by obtaining reduction credits in accordance with §101.29 of this title, regarding Emissions Banking and Trading. Concurrent with the §115.950 adoption, existing §101.29 is repealed and new §101.29 is adopted. The new section retains provisions that allow emission reduction credits (ERCs) and mobile emission reduction credits (MERCs) to be used for purposes of nonattainment offsetting. The new section expands uses of ERCs to include compliance with reasonably available control technology requirements and to allow for the creation and use of discrete emission reduction credits (DERCs) and mobile discrete emission reduction credits (MDERCs). Also, revisions to Chapter 117 of this title, concerning Control of Air Pollution from Nitrogen Compounds, are adopted concurrent with this adoption which provide more flexible trading options for sources of nitrogen oxides.

New §115.950 allows sources to meet Chapter 115 VOC control requirements by applying ERCs, MERCs, DERCs, or MDERCs. Please refer to the §101.29 adoption for a more complete description of these types of credits, and the requirements for their generation and use.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the new rule is to provide an alternative, cost-effective method of complying with the VOC control requirements of Chapter 115. Promulgation and enforcement of this rule will not affect private real property.

COASTAL MANAGEMENT PLAN The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission has reviewed this rulemaking action for consistency, and has determined that it is consistent with the applicable CMP goals and policies because the action provides a flexible, cost-effective alternative approach to rule compliance by allowing emissions banking and trading. This rulemaking action will not authorize any new sources of air emissions.

PUBLIC HEARING AND COMMENTERS A public hearing was held in Austin on July 8, 1997. Nine organizations and one individual submitted comments during the public comment period, which closed on July 10, 1997. Baker & Botts, Exxon Chemical Company, Houston Lighting & Power, and Texas Chemical Council supported the proposal. The United States Environmental Protection Agency generally supported the proposal, but submitted comments recommending various changes. Environmental Defense Fund, Sierra Club Lone Star Chapter, Texas Center for Policy Studies, and an individual generally opposed the proposal. No comments were received that specifically addressed provisions of Chapter 115. Evaluation of testimony regarding general banking and trading issues can be found in the Chapter 101 adoption, published concurrently with this adoption.

STATUTORY AUTHORITY The new section is adopted under the Texas Health and Safety Code (Vernon 1992); the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716209
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 23, 1997
Proposal publication date: June 10, 1997
For further information, please call: (512) 239–1970

♦ ♦ ♦

Chapter 117. Control of Air Pollution from Nitrogen Compounds

Subchapter D. Administrative Provisions

30 TAC §117.540, §117.570

The commission adopts amendments to §117.540, concerning Phased Reasonably Available Control Technology (RACT), and §117.570, concerning Trading, in Subchapter D (Administrative Provisions), and revisions to the State Implementation Plan. The amendments are adopted without changes to the proposed text as published in the June 10, 1997, issue of the *Texas Register* (22 TexReg 5653) and will not be republished.

EXPLANATION OF ADOPTED RULES Section 117.540 and §117.570 are amended to make the rule requirements consistent with new §101.29 of this title, regarding Emissions Banking and Trading. Existing §101.29 is being repealed, and new §101.29 is being added, concurrent with these amendments to Chapter 117. The amendments retain provisions that allow emission reduction credits (ERCs) and mobile emission reduction credits (MERCs) to be used for purposes of nonattainment offsetting. The amendments expand uses of ERCs to include compliance with RACT requirements and to allow for the creation and use of discrete emission reduction credits (DERCs) and mobile discrete emission reduction credits (MDERCs). Under the amendments, sources may meet Chapter 117 nitrogen oxides (NO_x) control requirements by applying ERCs or DERCs. Please refer to the §101.29 adoption for a more complete description of these types of credits, and the requirements for their generation and use. Also, revisions to Chapter 115 of this title, concerning Control of Air Pollution from Volatile Organic Compounds (VOC), are adopted concurrent with this rulemaking to provide more flexible trading options for sources of VOCs.

Section 117.540 allows affected sources to petition the agency for additional time to comply with Chapter 117 requirements. The rule was developed in response to companies' concerns that in spite of good faith efforts to achieve compliance by the required date, delays in delivery, construction, and installation of control equipment could be encountered in some cases. As originally adopted and previously amended, §117.540 requires documentation of the specific reasons for any requested compliance extension. This amendment requires that reduction credits, if reasonably available, must be obtained by sources seeking extensions past the Chapter 117 compliance date. Revised §117.540 requires that phased RACT petitions contain detailed documentation that credits are not reasonably available. In addition, §117.540 (b) and (c) are deleted, since the uses of MERCs for Chapter 117 compliance as outlined in these subsections are now addressed in new §101.29(d).

Existing §117.570 allows trading as an alternative method for sources of NO_x to comply with the control requirements of Chapter 117. Revisions to §117.570 in this adoption update rule references to include MERCs, DERCs, and MDERCs, clarify rule requirements, and eliminate redundant rule provisions now contained in new §101.29.

New §117.570(c)(4) specifies requirements for credit generation by units participating in a source cap in accordance with §117.223 (Source Cap). Under §117.223, heat input is calculated by taking the actual historical average of the daily heat input for each participating unit during a specified 24 consecutive month period, plus one standard deviation of the average daily heat input for that period. This provision for adding one standard deviation affords companies a compliance margin that accounts for normal fluctuations in the actual daily heat input. A source cap allowable emission rate based on historical heat input, without including this margin, could result in exceedances of the source cap under normal operating conditions unless either a compliance margin was provided, or the source lowered its actual emission rate to compensate for these fluctuations. In order to assure that credits generated under a source cap represent actual emission reductions, new §117.570(c)(4) requires that one standard deviation may not be included in the calculation of reduction credits generated. In addition, the source cap allowable must be reduced by the amount of the creditable reductions claimed for the unit in question.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the adoption is to provide an alternative flexible, cost-effective method of complying with the NO_x control requirements of Chapter 117. Promulgation and enforcement of these rule amendments will not affect private real property.

COASTAL MANAGEMENT PLAN The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission has reviewed this rulemaking action for consistency, and has determined that it is consistent with the applicable CMP goals and policies because the action provides a flexible, cost-effective alternative approach to rule compliance by allowing emissions banking and trading. This rulemaking action will not authorize any new sources of air emissions.

PUBLIC HEARING AND COMMENTERS A public hearing was held in Austin on July 8, 1997. Nine organizations and one individual submitted comments during the public comment period, which closed on July 10, 1997. Baker & Botts, Exxon Chemical Company, Houston Lighting & Power, and the Texas Chemical Council supported the proposal. The United States Environmental Protection Agency generally supported the proposal, but submitted comments recommending various changes. Environmental Defense Fund, Sierra Club Lone Star Chapter, Texas Center for Policy Studies, and an individual generally opposed the proposal. One comment was received that specifically addressed provisions of Chapter 117. Evaluation of testimony regarding general banking and trading issues can be found in the Chapter 101 adoption, published concurrently with this adoption.

An individual questioned the agency's allowance of additional time to comply with Chapter 117, and requested a definition of "not reasonably available" and "impracticable."

Section 117.540, relating to Phased RACT, requires that sources requesting a time extension to comply with Chapter 117 must demonstrate that credits are not reasonably available. Although the term "reasonably available" is not defined, the burden of proof rests with the company requesting the phased RACT extension. The company must supply full documentation of the sale price requested by the buyer and offered by the seller, as well as the reason why credits, if available, were not purchased. "Impracticable" considerations will be evaluated for technical merit using engineering judgment. Again, the burden of proof rests with the company requesting the RACT extension. The rule provides the opportunity for environmental benefit in conjunction with time extensions, which the staff believes is an improvement over the current rule requirements.

STATUTORY AUTHORITY The amendments are adopted under the Texas Health and Safety Code (Vernon 1992); the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716208

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: December 23, 1997

Proposal publication date: June 10, 1997

For further information, please call: (512) 239–1970

♦ ♦ ♦

Chapter 330. Municipal Solid Waste

Subchapter Z. Waste Minimization and Recycable Materials

30 TAC §§330.1181, 330.1183

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §330.1181 and §330.1183, concerning used oil filters. The amendments are adopted without changes to the proposed text as published in the October 3, 1997 issue of the *Texas Register* (22 TexReg 9854) and will not be republished.

EXPLANATION OF ADOPTED RULE. The purpose of the adopted rulemaking was limited to amending §330.1181 and §330.1183(a) to establish an increase in the allowable used oil filter (UOF) storage quantity prior to transport. The commission increased the allowable storage quantity to make it possible for persons handling UOFs to accumulate a larger quantity of UOFs in a single container or containers without having to register as a storage facility and meet storage facility rule requirements.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to allow collection centers, generators, and other handlers to store a larger quantity of UOFs prior to transport without registration as a storage facility. The rules will substantially advance this specific purpose by increasing the allowable UOF storage quantity from three 55-gallon containers or the volumetric equivalent to six 55-gallon containers or the volumetric equivalent. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes allow increased UOF storage without registration as a storage facility, and they do not limit or restrict a person's rights in private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed this rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Coastal Management Program.

HEARINGS AND COMMENTERS. A public hearing was not held.

GENERAL COMMENTS. Six comment letters were received on the proposal. They were from Central and South West Services, the Filter Manufacturers Council, Pennzoil Company, the Texas Automobile Dealers Association, Texas Motor Transportation Association, and Valvoline Company. All the commenters were supportive of the rule amendments as proposed.

STATUTORY AUTHORITY. These amendments are adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §§361.011, 361.024, and 361.432, which authorize the commission to regulate municipal solid waste and to adopt rules consistent with the general intent and purposes of the Act and require the commission to prohibit a used oil filter from being intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission. These amendments are also proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716395

Kevin McCalla

Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 29, 1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 239–6087

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Subchapter D. Operation Game Thief Fund

31 TAC §55.113

The Operation Game Thief Committee adopts an amendment to §55.113, concerning Reporting Violations; Eligibility of Applicant, without changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10106).

The amendment will function by allowing persons who provide information to game wardens, as well as those who furnish information directly to Operation Game Thief, to be eligible for Operation Game Thief rewards.

The amendment is necessary to modify the current eligibility mechanism for paying rewards to persons who provide information leading to the arrest and conviction of flagrant game-law violators.

The Operation Game Thief Committee received no comments concerning adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, §12.201, which provides the Operation Game Thief Committee with the authority to adopt rules for the implementation of the Operation Game Thief program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716430
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 389–4642

♦ ♦ ♦

Subchapter F. Restricted Wild Animals

31 TAC §§55.201–55.211

The Texas Parks and Wildlife Commission adopts the repeal of §§55.201-55.211, concerning the regulation of restricted wild animals, without changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9856).

The repeals will function to remove existing regulations that the department has no statutory authority to administer or enforce after September 1, 1997.

The repeals are necessary to implement the intent of Senate Bill 97, Acts of the 74th Texas Legislature, 1995, which relieved the department of regulatory authority with respect to certain wildlife classified as "dangerous wild animals" by former Parks and Wildlife Code, Chapter 12, Subchapter G.

The department received one comment opposing the adoption of the proposed repeals. The department responds that the adoption of the repeals is a moot point, since the statutory authority to enforce the former regulations has been removed from the Parks and Wildlife Code.

The repeals are adopted under the authority of Senate Bill 97, Acts of the 74th Texas Legislature, Regular Session, 1995, which removes the department's authority to administer or enforce the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716431
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 389–4642

♦ ♦ ♦

Chapter 57. Fisheries

Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants

31 TAC §§57.111, 57.113, 57.114, 57.134–57.136

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing on November 6, 1997, adopts repeal of §§57.134 and 57.136, amendments to §§57.111, 57.113, 57.114 and new §§57.134-57.136 concerning harmful or potentially harmful exotic shellfish. Sections 57.111 and 57.114 are adopted with changes to the proposed text as published in the October 3, 1997, issue of the Texas Register (22 TexReg 9856). Repealed sections and amended §§57.113, 57.134, 57.135 and 57.136 were adopted without changes and will not be republished.

The purpose of new §57.111 and §57.114 is to protect wild native aquatic species from depletion due to the detrimental effects of competition from exotic species and the introduction of exotic diseases. To further this purpose, §57.111 is amended to add the families Synbranchidae (rice eels/swamp eels/one-gilled eels) and Angullidae (except for Anguilla rostrata, the native American eel) to the list of harmful or potentially harmful exotic shellfish and to add definitions for the terms "disease", "disease-free", "waste", and "water in the state" in order to clarify the requirements of new §57.114.

New §57.114 furthers the department's goal of protecting wild native aquatic species from depletion by clarifying and

extending the disease certification requirements for importation of exotic shellfish into the state as well as for exotic shellfish produced within the state. The new section also advances the department's purpose by adding requirements for the quarantine of facilities experiencing mortalities which may be attributable to disease and by requiring laboratory testing of exotic shellfish for disease prior to discharge of wastewater into or adjacent to water in the state.

More specifically, the intent of §57.114(e) is to require private facilities to submit samples of exotic shellfish for laboratory analysis by a department approved shellfish disease specialist prior to any discharge of waste which has ever been in contact at any time with such exotic shellfish. Thus, even if water is first discharged into ditches, retention ponds, treatment ponds or other structures, a sample of the shellfish which had been held in such water must be submitted for laboratory analysis and certified as disease-free prior to any discharge of the water into or adjacent to water in the state. The testing must be performed no more than ten days before the commencement of the discharge.

The following is an example of how the requirements of new §57.114(e) would be implemented. A private facility wishes to discharge from Pond No. 1. The facility submits samples of the exotic shellfish held in Pond No. 1 for analysis on August 25th. The shellfish are certified as disease-free on September 1st. The facility begins discharging wastewater from Pond No. 1 on September 1st and ceases discharge on September 5th. On October 1st, the facility decides to harvest Pond No. 1 which will entail an additional discharge. The previous testing of shellfish from Pond No. 1 was performed more than ten days ago. Therefore, new samples of the shellfish held in Pond No. 1 must be submitted for analysis. The samples are submitted for analysis on October 2nd and certified disease-free on October 7th. On October 8th, the facility begins to discharge from Pond No. 1 and continues discharging until Pond No. 1 is drained and all the shellfish are harvested.

An alternative scenario using retention ponds would work as follows. On September 1st, the private facility decides an exchange of water is necessary in Pond No. 1. The facility cannot wait for the disease-free certification so it begins discharging into a retention pond on September 1st. On September 5th, an exchange of water is required in Ponds No. 2 and 3 so the facility discharges from those ponds into the retention pond. On September 30th it becomes obvious that a discharge from the retention pond will be necessary soon in order to avoid an inadvertent overflow discharge. The facility submits samples of shellfish from Ponds No. 1, 2, and 3 for laboratory analysis on September 30th. The shellfish are certified as disease-free on October 5th and the facility begins discharging from the retention pond.

The purpose of new §57.113 is to allow aquaculturists expanded business opportunities while still protecting wild native aquatic species from depletion. The rule furthers this purpose by allowing the possession, propagation, transportation and sale of Penaeus stylisrostris (Pacific blue shrimp) only when this species is held in quarantined aquaculture facilities located outside the harmful or potentially harmful exotic species exclusion zone.

The purpose of new §57.134 is to protect wild native aquatic species from depletion by ensuring that the Texas Natural Resource Conservation Commission (TNRCC), the agency with the primary responsibility for the regulation of waste discharges, will be aware of and able to regulate the discharges from aquaculture facilities proposing to raise exotic shellfish. The rule accomplishes this purpose by preventing applicants for renewals and amendments of exotic species permits from being authorized to receive and stock exotic shellfish thus creating the perceived need to begin waste discharges prior to obtaining the required authorization or exemption from TNRCC.

The purpose of new §57.135 is to protect wild native aquatic species from depletion by improving efficiency and coordination between the department and TNRCC regarding the regulation of aquaculture facilities. The rule accomplishes this purpose by implementing the requirement in the department's Memorandum of Understanding (MOU) with the TNRCC to adopt the MOU by rule. The purpose of new §57.136 is to protect wild native aquatic species from depletion by establishing penalties for violations of these rules.

TPWD has not prepared a Takings Impact Assessment for these rules because Government Code §2007.003 provides an exception for rules or proclamations adopted for the purpose of regulating or controlling nonindigenous or exotic aquatic resources.

Public hearings were held on the rule in Austin, Texas on August 28, 1997, and on November 6, 1997. Oral comments were provided at the November 6, 1997 hearing. The written comment period closed on November 3, 1997. Twelve commenters provided both specific and general comments. The following six commenters expressed strong support for the rules: The Coastal Conservation Association, The Hynes Bay Coalition, Neighbors Interested in Copano Environment, Regal Farms, the Pecos River Compact Commission and the Texas Shrimp Association. The following four commenters expressed support for the rules but suggested changes: the Coalition for the Protection of Copano Bay (CPCB), the Environmental Defense Fund (EDF), the Sportsmen Conservationists of Texas (SCOT) and the Texas Redfish Company (TRC). The following two commenters expressed neither support nor opposition for the rules but suggested changes: Harlingen Shrimp Farms (HSF) and the South Carolina Department of Natural Resources (SCDNR).

The EDF commented that the term "private facility" which appears several places in the rules is not defined and suggested that the term be clarified to include any facility that holds or cultures exotic shellfish. HSF asked for clarification as to whether the term "private facility" covers research and governmental facilities.

The term "private facility" is already defined in §57.111 to include any pond, tank, lake or other structure capable of holding cultured species in confinement whether located on public or private land or water.

HSF asked if the definition of the term "disease" is intended to cover natural or exotic pathogens. The definition of disease is intended to include all contagious pathogens or injurious parasites exactly as stated. It cannot be restricted to "exotic" pathogens since no one is able to say with certainty which pathogens are "exotic" and which are "natural". For example, there is still no consensus among experts as to whether or not the Taura syndrome virus is "exotic". Therefore, the department should not be required to show that a pathogen is "exotic" before taking action.

SCDNR suggested changing the definition of "disease-free" to "free of known contagious pathogens or injurious parasites".

HSF suggests that the definition of the term "disease-free" should be re-written to say "free of disease" or to include the remaining part of the definition of the term "disease".

The commission agrees that the definition of the term"disease-free" should be clarified. The rule has been modified to include the last part of the definition of "disease" as suggested by HSF. However, the commission does not want to limit its quarantine authority to "known" pathogens since the possibility exists for the occurrence of previously unidentified but extremely deleterious or lethal pathogens.

Concerning health certification of exotic shellfish, TRC commented that requiring a facility to quarantine, report and test if it experiences mortalities is too restrictive since there is a certain amount of naturally occurring mortality associated with the raising of even a healthy crop of shellfish. SCDNR also commented that the wording could be construed to include normal mortality in an otherwise healthy crop. HSF objected to the use of mortalities as a triggering event since there are environmental factors unrelated to disease which can cause significant mortalities such as low dissolved oxygen and cold temperatures. HSF suggested that the term "mortalities" be qualified either in the text of the rule or in the specific mechanisms set up to enforce it.

The Commission agrees that there is a certain amount of normal mortality associated with culturing shellfish and that environmental factors not related to disease could cause an aquaculture facility to experience mortalities. Therefore, due to the pressing need to have protective regulations in place prior to the next growing season, the commission has decided to address these issues through enforcement or implementation mechanisms as suggested by HSF. Consequently, department staff will meet with representatives of the industry and other interested parties to draft procedures and protocols for identifying and classifying mortalities. The intent is that the resulting procedures and protocols will be incorporated as permit conditions in each exotic species permit and modified as experience may require.

SCDNR commented that the department should consider requiring that the samples submitted for testing be pulled from the obviously affected parts of the facility's shellfish population, that is, lethargic or moribund animals should be submitted. The Commission expects that this issue will be addressed in the process of drafting the procedures and protocols to identify and classify mortalities referred to above.

SCOT commented that aquaculture facilities raising shrimp should not be allowed to wait until mortalities occur to trigger the quarantine, reporting and testing requirements. Instead, SCOT believes that such facilities should have to quarantine, report and test upon noticing "indications of diseased shrimp".

The Commission agrees that the possibility exists that disease could be present at a facility prior to the occurrence of observable mortalities. The commission has attempted to address such a situation in §57.114(e) by requiring routine disease testing of exotic shellfish prior to discharging any waste which at any time has been in contact with such shellfish from any structure at a private facility. Additionally, in the process of working with industry representatives and other interested parties to draft procedures and protocols as stated above, the commission hopes that department staff may be able to identify methods which will allow for earlier detection than that provided by traditional laboratory testing.

CPCB, EDF, HSF and SCDNR all suggested clarification or definition of the term "clinical testing". CPCB also suggested clarification of who would be responsible for the disease-free certification.

The Commission has modified the rule to make it clear that a permittee must submit samples of shellfish to a department approved shellfish disease specialist for analysis and certification.

EDF suggested clarifying in the rule that testing is still required even if waste is first routed to a holding structure before being discharged into or adjacent to water in the state.

The Commission has modified the rule to clarify that testing of exotic shellfish must occur before any waste which has been in contact at any time with such exotic shellfish may be discharged from any structure at the facility into or adjacent to water in the state. Additionally, detailed examples are given in the preamble of the intended implementation of the rule including a scenario wherein a holding or retention pond is used.

HSF commented that the preventive laboratory testing required by the rule would be "unmanageable and very expensive." SCDNR commented on the limited availability of diagnostic laboratories and their ability to handle large numbers of samples. SCOT expressed the view that the cost of testing required by the rules would not be a hardship on aquaculture facilities and commented that since almost all of the department's costs of regulating and managing exotic species are paid by sportsmen's user fees, sportsmen expect the department to do its utmost to conserve and protect native wildlife. EDF commented that the cost to aquaculture facilities of performing preventive testing must be weighed against the potentially huge cost to the public of the possibly disastrous impacts that exotic viruses could have on native fisheries.

The Commission has modified the rule so that the amount of testing required is completely within the control of the facility operator. The fewer the discharges, the less testing is necessary. Information available to the commission indicates that under normal environmental conditions a properly designed and managed facility can operate profitably with very few or no discharges. Currently, the only testing methodology available which is objective, relatively reliable and easy to implement and enforce from a regulatory standpoint is the traditional laboratory analysis. However, as stated above, the commission hopes that in the process of working with industry representatives and other interested parties, department staff may be able to identify methods of detection which would b e improvements upon the traditional laboratory methodology. The commission believes the rules allow the aquaculture industry to continue to operate reasonably profitably within a regulatory framework which is protective of native aquatic resources.

The amendments and new sections are adopted under the Texas Parks and Wildlife Code §66.007 which prohibits possession of exotic harmful or potentially harmful shellfish except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of the animals possessed under their permit and authorizes the department to make rules to carry out these provisions.

§57.111. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Disease- Contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

Disease-Free - A status, based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

Harmful or potentially harmful exotic fish -

(A)-(AA) (No change.)

(BB) Swamp Eels, Rice eels or One-Gilled Eel Family: Synbranchidae–all species;

(CC) Anguilliidae–all species except Anguilla rostrata;

Waste - waste shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

Water in the state - water in the state shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

§57.114. Health Certification of Exotic Shellfish.

(a) (No change.)

(b) Any person importing live exotic shellfish from facilities outside the state must prior to importation:

(1) provide documentation to the department that the shellfish to be imported have been inspected and certified as disease-free by a department-approved shellfish disease specialist; and

(2) receive acknowledgment from the department that the requirements of paragraph (b)(1) of this section have been met.

(c) Any person in possession of exotic shellfish for the purpose of production of post larvae must provide to the department monthly certification that nauplii and postlarvae have been examined and are certified to be disease-free. If certification cannot be provided, the exotic shellfish must be maintained in quarantine condition until the department acknowledges in writing that the stock is disease-free or specifies in writing condition(s) under which the quarantine can be removed.

(d) Any person in possession of exotic shellfish stocks that experience mortalities shall immediately place the private facility under quarantine condition, immediately notify the department of such mortalities and immediately send samples of the shellfish from the affected portions of the private facility to a department approved shellfish disease specialist for analysis. Results of the required analyses shall be forwarded to the department immediately upon receipt. The private facility, including all infected shellfish stock, shall be required to remain under quarantine condition until the department removes the quarantine in writing or authorizes in writing an appropriate disposal method based on the results of the required analyses.

(e) Before discharging any waste which at any time has been in contact with exotic shellfish into or adjacent to water in the state, the permittee shall submit samples of the shellfish from the particular structure(s) within the private facility from which a discharge is planned to a department approved shellfish disease specialist for analysis no more than ten days prior to discharge. If the analysis indicates that the shellfish are disease-free, the permittee may discharge from the particular structure(s) within the private facility from which the test samples were obtained. If the results indicate the presence of disease, the quarantine provisions of §57.114(d) of this chapter shall apply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716362
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: December 29, 1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 389–4642

♦ ♦ ♦

31 TAC §57.134, §57.136

These repeals are adopted under the Texas Parks and Wildlife Code §66.007 which prohibits possession of exotic harmful or potentially harmful shellfish except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of the animals possessed under their permit and authorizes the department to make rules to carry out these provisions. §57.134. Penalties

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716363
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: December 29, 1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 389–4642

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part V. Texas County and District Retirement System

Chapter 103. Calculation or Types of Benefits

34 TAC §103.5

The Texas County and District Retirement System adopts new §103.5, concerning the time and manner for the mandatory distribution of benefits without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10629).

The new section is being adopted to implement the distribution requirements of the Government Code, Chapter 841, §841.010. Specifically, the language of that statute requires that benefit distributions be determined and made in accordance with §401(a)(9) of the Internal Revenue Code which had established distribution requirements for qualified plans. The Texas County and District Retirement System is a qualified plan.

The new section lists the requirements and sets forth rules for the timely distribution of benefits to members of the system.

No comments were received regarding adoption of this new section.

This new section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

The Government Code, Chapter 841, Subchapter A, §841.010 is affected by this new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716334
Terry Horton
Director
Texas County and District Retirement System
Effective date: December 31, 1997
Proposal publication date: October 31, 1997
For further information, please call: (512) 328–8889

♦ ♦ ♦

Chapter 105. Creditable Service

34 TAC §105.4

The Texas County and District Retirement System adopts new §105.4, concerning the granting of current service credit for qualified service performed in the uniformed services by eligible members of the System without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10630).

The new section is adopted to implement the requirements of the Texas Government Code, Chapter 843, §843.603. Specifically, with respect to service qualifying under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. §4301 et seq.) (the USERRA), §843.603 requires that contributions, benefits and service credit be provided to eligible members in accordance with Section 414(u) of the Internal Revenue Code.

The new section lists the requirements and establishes procedures for granting current service credit to eligible employees for their uniformed service in accordance with the USERRA.

No comments were received regarding the adoption of this new section.

This new section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

The Government Code, Chapter 843, Subchapter G, §843.603 is affected by this proposed new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716335
Terry Horton
Director
Texas County and District Retirement System
Effective date: December 31, 1997
Proposal publication date: October 31, 1997
For further information, please call: (512) 328–8889

♦ ♦ ♦

Chapter 107. Miscellaneous Rules

34 TAC §107.4

The Texas County and District Retirement System adopts the repeal of §107.4, concerning conformity with the benefit limitations under Section 415 of the Internal Revenue Code as amended by the enactment of Public Law 104-188. The proposal to repeal §107.4 was published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10632).

Public Law 104-188 amended Section 415 of the Internal Revenue Code to exempt qualified governmental plans from certain benefit limitations found in that section. In 1997, the 75th Texas Legislature amended the Government Code, Chapter 844, §844.008 to provide for conformity with Section 415 of the Internal Revenue Code. Prior to amendment, §844.008 established a limitation of benefits but authorized the board of trustees to adopt rules to cause the plan to operate in conformity with the benefit limitations under Section 415 of the Internal Revenue Code as amended by federal law.

With the amendment of §844.008, this administrative rule is obsolete and no longer necessary to cause the System to operate in conformity with Section 415 of the Internal Revenue Code.

No comments were received regarding the repeal of this section.

The repeal of this section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716336
Terry Horton
Director
Texas County and District Retirement System
Effective date: December 31, 1997
Proposal publication date: October 31, 1997
For further information, please call: (512) 328–8889

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 21. Equipment and Vehicle Standards

Equipment and Vehicle Standards

37 TAC §21.2

The Texas Department of Public Safety adopts the repeal of §21.2, concerning Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear, without changes to the

proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10254).

The justification for the repeal will be to allow a person 21 years of age or older to be exempt from wearing a motorcycle helmet if they so choose.

The section is repealed with simultaneous proposal of new §21.2 which provides for a helmet law exemption for persons 21 years of age and older.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 19, 1997.

TRD-9716133
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: December 22, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 424–2890

♦ ♦ ♦

The Texas Department of Public Safety adopts new §21.2, concerning Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear, without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10254).

The justification for the new section will be to allow a person 21 years of age or older to be exempt from wearing a motorcycle helmet if they so choose.

The new section is necessary in order for the department to implement the provisions of Senate Bill 99, 75th Legislature, 1997, which amends the helmet law to allow for persons 21 years of age and older to be exempt from wearing a helmet as long as certain requirements are met.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 19, 1997.

TRD-9716134
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: December 22, 1997
Proposal publication date: October 17, 1997
For further information, please call: (512) 424–2890

♦ ♦ ♦

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Definition of Terms

37 TAC §141.111

The Texas Board of Pardons and Paroles adopts an amendment to §141.111, concerning definition of terms, without changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10107).

The Board proposes an amendment to §141.111 for the purpose of defining new terms cited in hearings rules proposed in Chapter 146. The new sections are proposed in order to implement House Bill 1112, Chapter 429, Acts of the 75th Legislature, Regular Session, 1997 (effective January 1, 1998).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Code of Criminal Procedure, Article 42.18, §14, and §508.281, Government Code, which vest the Board with authority to promulgate rules under which releasees are to be heard on revocations of parole and mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716407
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 463–1883

♦ ♦ ♦

Chapter 145. Parole

Revocation of Administrative Release (Parole, Mandatory Supervision, and Executive Clemency)

37 TAC §§145.41-145.47, 145.49-145.53, 145.57

The Texas Board of Pardons and Paroles adopts the repeals to §§145.41-145.47, 145.49-145.53, and 145.57, concerning hearing procedures in the revocation of parole or mandatory supervision, without changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10107).

The sections are proposed for repeal to incorporate new and old language under Chapter 146, Revocation of Parole or Mandatory Supervision, in order to implement House Bill 1112, Chapter 429, Acts of the 75th Legislature, Regular Session, 1997 (effective January 1, 1998).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Code of Criminal Procedure, Article 42.18, §14 and §508.281, Government Code, which vest the Board with authority to promulgate rules under which releasees are to be heard on parole revocations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716402
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 463–1883

♦ ♦ ♦

Chapter 146. Revocation of Parole or Mandatory Supervision

37 TAC §§146.3–146.10

The Texas Board of Pardons and Paroles adopts new sections §§146.3, 146.4, 146.5, 146.7, 146.9, and 146.10, concerning hearing procedures on revocation of parole or mandatory supervision, without changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10107). The Board also adopts new §146.6 and new §146.8, concerning hearing procedures on revocation of parole or mandatory supervision, with one change to the proposed text of each rule as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10107).

The new sections are proposed as part of a new Chapter 146, Revocation of Parole or Mandatory Supervision, in order to implement House Bill 1112, Chapter 429, Acts of the 75th Legislature, Regular Session, 1997 (effective January 1, 1998). The purpose of the new sections is to streamline the hearing procedures so as to facilitate the hearing process by working in tandem with the counties, law enforcement, and TDCJ Parole Division.

Three sets of comments were received. Two were from TDCJ divisions (Interstate Compact office and Parole Division). The third comment was from co-chair of the Texas Criminal Defense Lawyers Association Committee on Parole and Sentencing. Comments were received on proposed §§146.3 (Right to Counsel), 146.4 (Procedure after Waiver of Preliminary Hearing), 146.6 (Scheduling of Preliminary Hearing), 146.7 (Preliminary Hearing), and 146.8 (Scheduling of Revocation Hearing).

Three comments were received from the Interstate Compact office. It was suggested that proposed §146.7(d)(3), which requires a tape recording to be made a part of the record in preliminary hearings, be changed to allow for the lack of a tape recording in some states. No change is recommended, as this language remains unchanged from prior rules and refers to preliminary hearings held in Texas as the receiving state. The second suggested change was to add new subsection (g) to §146.7 to provide that, for those parolees sent to Texas from another state following a preliminary hearing under Article 42.11, Code of Criminal Procedure, the parole panel need not make any decision on whether to proceed to revocation. The suggested change will not be made because the language in §146.7(d) gives specific direction to the parole panel or designee of the board to transfer the record of the hearing to the director of paroles, hearings, and clemency, rather than to the parole panel for a decision on whether to proceed to a revocation, so that the record may be forwarded to the sending state. The third suggested change was to add a new subsection to §146.8 to provide that a revocation hearing not be scheduled following a preliminary hearing where Texas is the receiving state. No change will be made in the proposed amendment, because the rule specifies that the hearings section shall schedule a hearing upon request. In cases where Texas is the receiving state and is conducting only a preliminary hearing according to the Compact, there should be no request made for a revocation hearing and no hearing held, because the record will have been transferred to the sending state under §146.7(d).

Comments from TDCJ Parole Division related to proposed §146.4 (Procedure after Waiver of Preliminary Hearing) and §146.6 (Scheduling of Preliminary Hearing). The first comment was a suggestion that proposed §146.4 be amended to require the Parole Division to give a warning to the releasee during the initial interview following arrest to the effect that the releasee has not been "influenced, coerced, or persuaded in any manner in making said waiver," and that releasee is not making the waiver with the hope that "the Board will not consider all options available to them" regarding releasee's supervision. The suggested change will not be made because Morrissey v. Brewer provides the sole guide for the notice requirements in the proposed rule. In addition, this policy change would more properly be addressed by the Parole Division, eliminating any language regarding Board options, which are covered adequately in Board Rules.

The second comment by Parole Division is that the definition of warrant execution in proposed §146.6(b) is erroneous under House Bill 1112 because it incorporates the portion of House Bill 1112 relating to when a hearing must be held rather than some other definition of when a warrant is executed. No change will be made to the proposed language dictated by House Bill 1112. The critical 60-day time period within which the Board must dispose of the revocation case begins upon warrant execution, not warrant issuance. If the releasee is charged only with an administrative violation, the arrest on the parole violator warrant is warrant execution for the purposes of House Bill 1112. For other purposes, the warrant is considered as "executed" and begins the 60-day time period upon occurrence of certain events, such as notification by the sheriff of the completion of a jail sentence or of formal dismissal of the charges by the local district attorney (see Texas Code of Criminal Procedure, Article 42.18, §14(c)(1)(a) and (b)).

The third comment by the Parole Division was to request that the Board amend proposed §146.6 (Scheduling of Preliminary Hearing) and §146.8 (Scheduling of Revocation Hearing) to provide that the revocation hearing must be held within a reasonable time following return to custody from an out-of-state facility or federal institution under Texas Code of Criminal Procedure, Article 42.18, §14(c)(2) and (d)(1), or if the releasee is transferred to a TDCJ or contract facility under Article 42.18, §13A, following the expiration of the 60-day time period for a hearing under House Bill 1112. The Board has made the suggested changes to both rules by adding a new subsection (e) to proposed §146.6 and by adding a new subsection (f) to proposed §146.8.

The third comment on the proposed rules was made by co-chair of the Texas Criminal Defense Lawyers Association Committee on Parole and Sentencing. The commenter offered general favorable comments about the proposed rules but offered specific comments regarding proposed §146.3 (Right to Counsel) and §146.6 (Scheduling of Preliminary Hearing).

Regarding Rule 146.3, the commenter comments that the hearing officer be required to make an on-the-record inquiry of the releasee in order to determine if appointed counsel is warranted, in order to support the subsequent decision of the director. The proposed change will not be made, as the director may exercise the right to choose a designee to make the attorney determination decision.

The co-chair of the Texas Criminal Defense Lawyers Association Committee on Parole and Sentencing also comments on §146.6 that, in the proposed rule, there are no specific requirements for the service of certain information upon the releasee and that this is an unwelcome change from prior Board rules. He suggests that the Board retain and amend the proposed rule to provide for service of information to the releasee at least five days in advance of the preliminary hearing. The proposed change will not be made, as the TDCJ Parole Division, which provides this information to the releasee prior to a hearing, should address the issue by administrative directive.

The new rules are adopted under the Code of Criminal Procedure, Article 42.18, §14, and §508.281, Government Code, which vest the Board with authority to promulgate rules under which releasees are to be heard on revocations of parole and mandatory supervision.

§146.6. Scheduling of Preliminary Hearing.

(a) Upon request, the hearings section shall schedule a preliminary hearing unless:

(1) more than seven calendar days have elapsed from the time that the warrant is executed; or

(2) information has not been presented to hearings section that the releasee was served with the following:

(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause to believe the releasee has committed a parole violation;

(B) written notice of the allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the board;

(G) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(H) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(b) For the purposes of subsection (a)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the 61st day with the commission of an offense; or

(2) the sheriff having custody of the releasee notifies the division that the releasee has discharged the sentence or that the prosecutor has dismissed the charge under Texas Code of Criminal Procedure, Article 32.02.

(c) If the hearings section receives a request for a preliminary hearing later than the seventh calendar day following the provisions described in subsection (a)(1) of this section, the hearings section shall require the requestor to submit the scheduling request directly to the director of paroles, hearings, and clemency, along with a written explanation of the delay.

(d) Subsection (a)(1) of this section does not apply when a releasee is:

(1) transferred under Article 42.18, §13A, to a correctional facility operated by or under contract with the department; or

(2) returned to custody from another state, a federal correctional institution, or a medical or psychiatric facility.

(e) In cases under subsection (d) of this section, a preliminary hearing shall be held within a reasonable time.

§146.8. Scheduling of Revocation Hearing.

(a) Upon request, the hearings section shall schedule a revocation hearing unless information has not been presented to the hearings section that the releasee was served with the following:

(1) notice of the right to a revocation hearing and that its purpose is to make a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation of parole;

(2) written notice of the allegations of parole violation against the releasee;

(3) notice of the right to full disclosure of the evidence against the releasee;

(4) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(5) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation of the witness;

(6) notice that releasee has an opportunity to be heard and to show that he did not violate the conditions, or if the releasee did, that circumstances in mitigation suggest that the violation does not warrant revocation;

(7) notice that the case will be heard by a parole panel or designee of the board;

(8) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(9) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(b) If the releasee is not entitled to a preliminary hearing and requests a revocation hearing, the hearings section shall schedule a revocation hearing unless:

(1) more than seven calendar days have elapsed from the time that the warrant is executed; or

(2) information has not been presented to hearings section that the releasee was served with the following:

(A) notice of the right to a revocation hearing and that its purpose is to make a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation of parole;

(B) written notice of the claimed allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that releasee has an opportunity to be heard and to show that he did not violate the conditions, or if the releasee did, that circumstances in mitigation suggest that the violation does not warrant revocation;

(G) notice that the case will be heard by a parole panel or designee of the board;

(H) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the board will in all probability revoke; and

(I) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(c) If the hearings section receives a request for a revocation hearing later than the seventh calendar day following the provisions described in subsection (b)(1) of this section, the hearings section shall require the requestor to submit the scheduling request directly to the director of paroles, hearings, and clemency, along with a written explanation of the delay.

(d) Subsection (b)(1) of this section does not apply when a releasee is:

(1) transferred under Article 42.18, §13A, to a correctional facility operated by or under contract with the department; or

(2) returned to custody from another state, a federal correctional institution, or a medical or psychiatric facility.

(e) For the purposes of subsection (b)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the 61st day with the commission of an offense; or

(2) the sheriff having custody of the releasee notifies the division that the releasee has discharged the sentence or that the prosecutor has dismissed the charge under Article 32.02, Texas Code of Criminal Procedure.

(f) In cases under subsection (d) of this section, a revocation hearing shall be held within a reasonable time.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716405
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 463–1883

♦ ♦ ♦

Chapter 149. Mandatory Supervision

Rules and Conditions of Mandatory Supervision

37 TAC §149.1

The Texas Board of Pardons and Paroles adopts an amendment to §149.1, concerning conditions and rules of mandatory supervision, without changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10107). The Board proposes an amendment to §149.1 for the purpose of clarifying that upon release to mandatory supervision, all conditions of parole or release to mandatory supervision required by law are imposed.

No comments were received regarding adoption of the amendment.

The amendment is proposed under the Code of Criminal Procedure, Article 42.18, §8(g), and §508.044(b)(2) and (d)(3), Government Code, which direct a parole panel to impose conditions of parole or release to mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716406
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: December 29, 1997
Proposal publication date: October 10, 1997
For further information, please call: (512) 463–1883

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) adopts the repeal of §48.2903 and §48.2904; and adopts new §§48.2903-48.2905 and 48.2908 in its Community Care for Aged and Disabled (CCAD) chapter. New §48.2904 and §48.2908 are adopted with changes to the proposed text published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9445). The repeals of §48.2903 and §48.2904 and new §48.2903 and §48.2905 are adopted without changes to the proposed text and will not be republished.

The justification for the repeals and new sections is to consolidate the deductions from the income eligibility budget into one area and incorporate additional exemptions and exclusions already allowed under Medicaid policy.

The repeals and new sections will function by providing public access to correct information.

During the comment period, DHS received a comment from the Tarrant County Department of Human Services. The commenter had concerns that the changes would cause some of the money they provide to be countable income, thus making some clients ineligible for CCAD services. None of the assistance they are providing will be considered countable income.

DHS has initiated clarifications to the text of §48.2904 and §48.2908. In §48.2904, the word "counted" is changed to "countable." In §48.2908, all references to the word "excluded" are changed to "exempted."

Eligibility

40 TAC §48.2903, §48.2904

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716216
Glenn Scott
General Counsel
Texas Department of Human Services
Effective date: January 1, 1998
Proposal publication date: September 19, 1997
For further information, please call: (512) 438–3765

♦ ♦ ♦

40 TAC §§48.2903–48.2905, 48.2908

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§48.2904. Income from Excludable Sources.

Income may be fully or partially countable, or may be excluded from the current eligibility budget. Excludable income will continue to be monitored by the caseworker at each financial review to determine how eligibility is affected. Excludable sources of income include:

(1) deductions from earned income, including social security payments, Medicare premium payments, bonds, pensions, and union dues;

(2) the first $65 of a client's (or couple's) net earned income, plus 1/2 of the remainder;

(3) loans, grants, scholarships, and fellowship funds obtained and used under conditions that preclude their use for current living costs. Any portion used to pay any other expense (room, board, books, etc.) cannot be excluded;

(4) Veterans Administration aid-and-attendance benefits, homebound elderly benefits, and payments to certain eligible veterans for purchase of medications;

(5) infrequent or irregular income (income received less frequently than once a month) that averages $20 per month or less;

(6) 1/3 of the total amount of child support payments for an eligible child; and

(7) allowable exclusions from self-employment income, as indicated on the following chart.
Figure 1: 40 TAC §48.2904(7)

§48.2908. Indian-related Exemptions.

(a) Type of payment. The following statutes provide that certain types of payments made to members of Indian tribes are exempt from income and resources as specified in paragraphs (1)-(4) of this subsection, or only from income as specified in paragraph (5) of this subsection.

(1) Indian Judgment Funds Distribution Act - Public Law 93-134. Effective October 19, 1973, per capita distribution payments to members of Indian tribes who are due judgment funds, according to a plan of the Secretary of the Interior (or legislation, when a plan cannot be prepared or is not approved by the Congress) are exempted from income and resources. This does not include payments of funds distributed or held in trust (i.e., in the possession or care of a trustee) according to public laws enacted before October 19, 1973.

(2) Distribution of Indian Judgment Funds - Public Law 97-458. Effective January 12, 1983, Indian judgment funds held in trust (i.e., in the possession or care of a trustee) or distributed per capita, pursuant to an approved plan, or their availability, are exempted from income and resources. Indian judgment funds include interest and investment income accrued while the funds are held in trust. Initial purchases made with distributed judgment funds are exempted from resources.

(3) Per Capita Act - Public Law 98-64.

(A) Effective August 2, 1983, per capita distributions of all funds held in trust by the Secretary of the Interior to members of an Indian tribe are exempted from income and resources.

(B) Any local tribal funds that a tribe distributes to individuals on a per capita basis, but which have not been held in

trust by the Secretary of the Interior (e.g., tribally managed gaming revenues) are not exempted from income and resources under this provision.

(4) Alaska Native Claims Settlement Act (ANCSA) - Public Law 100-241.

(A) Effective February 3, 1988, the following items received from a native corporation are exempted from income and resources:

(i) cash received from a native corporation (including cash dividends on stock received from a native corporation) to the extent it does not exceed $2,000, per individual per year;

(ii) stock (including stock issued or distributed by a native corporation as a dividend or distribution on stock);

(iii) a partnership interest;

(iv) land or an interest in land (including land or an interest in land received from a native corporation as a dividend or distribution on stock); and

(v) an interest in a settlement trust.

(B) The ANCSA also provides that up to $2,000 in retained distributions from a native corporation may be exempted from resources for each year beginning with 1988.

(5) Payments from Individual Interests in Trust or Restricted Lands - Public Law 103-66.

(A) Effective January 1, 1994, up to $2,000 per year received by Indians that is derived from individual interests in trust or restricted lands is exempted from income.

(B) Interests of individual Indians in trust or restricted lands are exempted from resources.

(b) Payments to specific Indian tribes and groups. The following statutes provide that certain payments made to members of specified Indian tribes and groups are exempt from income and resources.

(1) Distribution of Per Capita Funds - Public Law 85-794. Effective August 28, 1958, per capita payments to members of the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation are exempted from income and resources.

(2) Distribution of Judgment Funds - Public Law 92-254. Effective March 18, 1972, per capita distribution payments by the Blackfeet and Gros Ventre tribal governments to members, which resulted from judgment funds to the tribes, are exempted from income and resources.

(3) Distribution of Claims Settlement Funds - Public Law 93-531 and Public Law 96-305. Effective December 22, 1974, settlement fund payments to members of the Hopi and Navajo Tribes, and the availability of such funds, are exempted from income and resources.

(4) Receipts from Lands Held in Trust for Indian Tribes - Public Law 94-114.

(A) Effective October 17, 1975, receipts derived from the following trust lands and distributed to members of designated Indian tribes are exempted from income and resources.

(B) The first four Indian groups had lands conveyed with mineral rights prior to Public Law 94-114; that law conveyed the rest of the land to the remaining Indian groups.

Figure 1: 40 TAC §48.2908(4)(B)

(5) Distribution of Judgment Funds - Public Law 94-189. Effective December 31, 1975, judgment funds distributed per capita to, or held in trust for, members of the Sac and Fox Indian Nation, and the availability of such funds, are exempted from income and resources.

(6) Distribution of Judgment Funds - Public Law 94-540. Effective October 18, 1976, judgment funds distributed per capita to, or held in trust for, members of the Grand River Band of Ottawa Indians, and the availability of such funds, are exempted from income and resources.

(7) Distribution of Judgment Funds - Public Law 95-433. Effective October 10, 1978, any judgment funds distributed per capita to members of the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation are exempted from income and resources.

(8) Receipts from Lands Held in Trust - Public Law 95-498. Effective October 21, 1978, receipts derived from trust lands awarded to the Pueblo of Santa Ana and distributed to members of that tribe are exempted from income and resources.

(9) Receipts from Lands Held in Trust - Public Law 95-499. Effective October 21, 1978, receipts derived from trust lands awarded to the Pueblo of Zia and distributed to members of that tribe are exempted from income and resources.

(10) Distribution of Judgment Funds - Public Law 96-318. Effective August 1, 1980, any judgment funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma are exempted from income and resources.

(11) Maine Indian Claims Settlement Act - Public Law 96-420. Effective October 10, 1980, all funds and distributions to members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act, and the availability of such funds, are exempted from income and resources.

(12) Distribution of Judgment Funds - Public Law 97-95. Effective December 17, 1981, any distributions of judgment funds to members of the San Carlos Tribe of Arizona are exempted from income and resources.

(13) Distribution of Judgment Funds - Public Law 97-371. Effective December 20, 1982, any distributions of judgment funds to members of the Wyandot Tribe of Indians of Oklahoma are exempted from income and resources.

(14) Distribution of Judgment Funds - Public Law 97-372. Effective December 20, 1982, distributions of judgment funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) are exempted from income and resources.

(15) Distribution of Judgment Funds - Public Law 97-376. Effective December 21, 1982, judgment funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana are exempted from income and resources.

(16) Distribution of Judgment Funds - Public Law 97-402. Effective December 31, 1982, distributions of judgment funds to members of the Clallam Tribe of Indians of the State of Washington (Port Gamble Indian Community, Lower Elwha Tribal Community,

and the Jamestown Band of Clallam Indians) are exempted from income and resources.

(17) Distribution of Judgment of Funds - Public Law 97-403. Effective December 31, 1982, judgment funds distributed per capita or made available for programs for members of the Pembina Chippewa Indians (Turtle Mountain Band, Chippewa Cree Tribe, Minnesota Chippewa Tribe, and Little Shell Band of Chippewa Indians of Montana) are exempted from income and resources.

(18) Distribution of Judgment Funds - Public Law 97-408. Effective January 3, 1983, per capita distributions of judgment funds to members of the Gros Ventre and Assiniboine Tribes of Fort Belknap Indian Community, and the Papago Tribe of Arizona, are exempted from income and resources.

(19) Distribution of Judgment Funds - Public Law 97-436. Effective January 8, 1983, up to $2,000 of per capita distributions of judgment funds to members of the Confederated Tribes of the Warm Springs Reservation are exempted from income and resources.

(20) Distribution of Judgment Funds - Public Law 98-123. Effective October 13, 1983, judgment funds distributed to the Red Lake Band of Chippewa Indians are exempted from income and resources.

(21) Distribution of Judgment Funds - Public Law 98-124. Effective October 13, 1983, funds distributed per capita or family interest payments for members of the Assiniboine Tribe of the Fort Belknap Indian Community of Montana and the Assiniboine Tribe of the Fort Peck Indian Reservation of Montana are exempted from income and resources.

(22) Distribution of Claims Settlement Funds - Public Law 98-432. Effective September 28, 1984, judgment funds and income therefrom distributed to members of the Shoalwater Bay Indian Tribe are exempted from income and resources.

(23) Distribution of Claims Settlement Funds - Public Law 98-500. Effective October 19, 1984, all distributions to heirs of certain deceased Indians under the Old Age Assistance Claims Settlement Act are exempted from income and resources.

(24) Distribution of Judgment Funds - Public Law 98-602. Effective October 30, 1984, judgment funds distributed per capita or made available for any tribal program, for members of the Wyandotte Tribe of Oklahoma and the Absentee Wyandottes, are exempted from income and resources.

(25) Distribution of Judgment Funds - Public Law 99-130. Effective October 28, 1985, per capita and dividend payment distributions of judgment funds to members of the Santee Sioux Tribe of Nebraska, the Flandreau Santee Sioux Tribe, and the Prairie Island Sioux, Lower Sioux,and Shakopee Mdewakanton Sioux Communities of Minnesota are exempted from income and resources.

(26) Distribution of Judgment funds - Public Law 99-146. Effective November 11, 1985, funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi are exempted from income and resources.

(27) Distribution of Claims Settlement Funds - Public Law 99-264. Effective March 24, 1986, distributions of claims settlement funds to members of the White Earth Band of Chippewa Indians as allottees, or their heirs, are exempted from income and resources.

(28) Distribution of Judgment Funds - Public Law 99-346. Effective June 30, 1986, payments or distributions of judgment funds, and the availability of any amount for such payments or distributions, to members of the Saginaw Chippewa Indian Tribe of Michigan are exempted from income and resources.

(29) Distribution of Judgment Funds - Public Law 99-377. Effective August 8, 1986, judgment funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi are exempted from income and resources.

(30) Distribution of Judgment Funds - Public Law 100-139. Effective October 26, 1987, judgment funds distributed to members of the Cow Creek Band of Umpqua Tribe of Indians are exempted from income and resources.

(31) Aleutian and Pribilof Islands Restitution Act - Public Law 100- 383. Effective August 10, 1988, per capita restitution payments made to eligible Aleuts who were relocated or interned during World War II are exempted from income and resources.

(32) Distribution of Claims Settlement Funds - Public Law 100-411. Effective August 22, 1988, per capita payments of claims settlement funds to members of the Coushatta Tribe of Louisiana are exempted from income and resources.

(33) Hoopa-Yurok Settlement Act - Public Law 100-580. Effective October 31, 1988, funds distributed per capita for members of the Hoopa Valley Indian Tribe and the Yurok Indian Tribe are exempted from income and resources.

(34) Distribution of Judgment Funds - Public Law 100-581. Effective November 1, 1988, judgment funds held in trust by the United States, including interest and investment income accruing on such funds, and judgment funds made available for programs or distributed to members of the Wisconsin Band of Potawatomi (Hannahville Indians Community and Forest County Potawatomi) are exempted from income and resources.

(35) Distribution of Money and Land - Public Law 101-41. Effective June 21, 1989, all funds, assets, and income from the trust fund transferred to the members of the Puyallup Tribe under the Puyallup Tribe of Indians Settlement Act of 1989 are exempted from income and resources.

(36) Distribution of Judgment Funds - Public Law 101-277. Effective April 30, 1990, judgment funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida, (plus any interest and investment income accruing on the funds held in trust), and the availability of those funds, are exempted from income and resources.

(37) Distribution of Settlement Funds - Public Law 101-503. Effective November 3, 1990, payments, funds, distributions, or income derived from them under the Seneca Nation Settlement Act of 1990 are exempted from income and resources.

(38) Distribution of Settlement Funds - Public Law 101-618. Effective November 16, 1990, per capita distributions of settlement funds under the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 are exempted from income and resources.

(39) Distribution of Settlement Funds - Public Law 103-116. Settlement funds, assets, income, payments or distributions from trust funds to members of the Catawba Indian Tribe under the

Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 are exempted from income and resources.

(40) Distribution of Settlement Funds - Public Law 103-436. Effective November 2, 1994, settlement funds held in trust, including interest and investment income accruing on such funds, and payments made to members of the Confederated Tribes of the Colville Reservation under the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act are exempted from income and resources.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716217
Glenn Scott
General Counsel
Texas Department of Human Services
Effective date: January 1, 1998
Proposal publication date: September 19, 1997
For further information, please call: (512) 438–3765

♦ ♦ ♦

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §§700.101 and 700.334-700.336; adopts amendments to §§700.315-700.318, 700.322, 700.330, 700.513, 700.1105, 700.1310, 700.1314, 700.1315, 700.1332, 700.1501, 700.1502, 700.1504, 700.1505, and 700.1718; and adopts new §§700.334, 700.522, and 700.1506 in its Child Protective Services chapter. The amendments to §§700.316, 700.317, 700.330, 700.513, 700.1105, 700.1310, 700.1332, 700.1502, and 700.1504, and new §700.522 are adopted with changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10112). The repeal of §§700.101 and 700.334-700.336, the amendments to §§700.315, 700.318, 700.322, 700.1314, 700.1315, 700.1501, 700.1505, and 700.1718; and new §§700.334, and 700.1506 are adopted without changes to the proposed text and will not be republished.

The justification for the proposal is to incorporate legislative changes that were enacted by the 75th Legislature, Regular Session, 1997.

The proposal will function by improving permanency decision efforts for families and children and providing public access to correct information.

No comments were received regarding adoption of the proposal. TDPRS has, however, initiated several changes to the text for clarification. In §700.316, TDPRS has added the words "if eligible" to paragraph (8). In §700.317, TDPRS has made several revisions to subsection (a)(1), including changing references from Temporary Assistance for Needy Families (TANF) to Aid to Families with Dependent Children (AFDC). In §700.330, TDPRS has deleted subsection (d) because it is not needed. In §700.513, TDPRS has revised the language of subsections (a)(2) and (b)(2). Also in §700.513, TDPRS has made revisions to subsection (c), subsection (d)(2), (3), and (4), subsection (g), and subsection (h)(2). In §700.522(1), TDPRS has revised the language for clarification. In §700.1105, TDPRS has made several revisions to clarify what is needed and when to request a paternity search, including the addition of new subsection (b). In §700.1310, TDPRS has clarified the language in subsection (f). In §700.1332(a), TDPRS has changed the time frame back to 45 days because staff indicated that they might not be able to comply with the change. In §700.1502, TDPRS has added the word "cultural" in paragraph (2)(H), and in paragraph (2)(M) has added clarification regarding criminal history checks on persons who have child care responsibilities and the time frames for completing foster and adoptive home criminal checks. Also in §700.1502, TDPRS has deleted the words "be obtained" and added the words "have been completed" in paragraph (2)(M)(iv). In §700.1504, clarification is added regarding approval of adoption home studies.

Subchapter A. Administration

40 TAC §700.101

The repeal is adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The repeal implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716344
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter C. Eligibility for Child Protective Services

40 TAC §§700.315-700.318, 700.322, 700.330, 700.334

The amendments and new section are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments and new section implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster Care Assistance.

The child must meet all of the following criteria to be eligible for Title IV-E, Medical Assistance Only (MAO), or state-paid foster care assistance.

(1) Responsibility for Placement and Care. The Texas Department of Protective and Regulatory Services TDPRS must have the responsibility for the child's placement and care. This requirement is met if:

(A) the child is placed in TDPRS's managing conservatorship by written court order issued under Title 5, Texas Family Code;

(B) the child is placed by TDPRS under the statutory authorization of §262.104, Texas Family Code; or

(C) the child lives with his minor parent, and the minor parent is in TDPRS's managing conservatorship. The child and the minor parent must reside together in the same foster family home or child-care institution.

(2) (No change.)

(3) Age if attending school. A youth's eligibility for foster care assistance can be extended until the end of the month of his graduation from high school or the end of the month of his completion of vocational or technical training classes when the conditions specified in subparagraph (A) of this paragraph are satisfied or when the conditions specified in subparagraphs (B) or (C) of this paragraph are satisfied in addition to the conditions in subparagraph (A) of this paragraph.

(A) (No change.)

(B) Special condition affecting Title IV-E foster-care assistance. If a youth receives a general equivalency diploma (GED) and enrolls in vocational or technical training classes before his 18th birthday, the youth's eligibility for Title IV-E foster-care assistance may be extended until the end of the month in which he completes or withdraws from the vocational or technical training, as long as the youth is scheduled to complete the training before or during the month of his 19th birthday.

(C) Special condition affecting state-paid foster-care assistance. A youth who is scheduled to graduate from high school after his 19th birthday is eligible to receive state-paid foster-care assistance from the beginning of the first full month following his 18th birthday until the end of the month of his graduation or withdrawal, as long as the youth is scheduled to graduate from high school before or during the month of his 20th birthday.

(4) Placement. The child must be receiving care in Texas in a licensed, certified, or verified foster home or a licensed, private, nonprofit child-caring institution approved for TDPRS foster-care assistance, except in the following circumstances.

(A) The child is in permanent foster family care and the foster family must move out of state. The foster family must secure foster care licensing in the new state of residence within 90 days, or the child's eligibility for foster care assistance will be terminated until appropriate licensing is secured. The TDPRS program director may grant one extension of no more than 60 days, but only if it is clear that the foster family will be licensed in the additional time.

(B) The child must be removed from an out-of-state adoptive or foster care placement; and TDPRS determines that another out-of-state placement will better meet the child's needs than a return to Texas.

(C) Under the service plan, the child is to be reunited with his biological family and must be moved out of state in order to live near the family.

(D) The child qualifies for Level of Care (LOC) VI, and no nonprofit, residential child care facility that can meet the child's needs is available in the area in which the child must be placed. When no nonprofit facility is available for a LOC VI child, the child may receive care in a licensed, for-profit facility that provides LOC VI services. The facility must enter into an agreement with TDPRS to provide services to children in the department's conservatorship at the department's normal payment rates. A child placed in a for-profit facility at LOC VI may continue to receive care in the facility if his LOC changes, as long as

(i) the child's needs are best served by his remaining in the facility, and

(ii) the facility agrees to continue serving the child at the new LOC.

(5) Resources. The child must not have equity in real or personal property in excess of $1,000.

(6) Income. The child's monthly income must be less than the daily rate paid to the child-care facility for the child's maintenance. Countable income includes supplemental security income (SSI); retirement, survivors, and disability insurance (RSDI); Veterans Administration (VA) benefits; any other dependent or survivor's income; funds resulting from the child's Indian heritage; or other income from private sources. The following types of income are not counted in determining eligibility:

(A) Earnings of a child who is:

(i) a full-time student;

(ii) a part-time student and not a full-time employee. Full-time employment is 30 hours or more per week;

(B) money given as a gift on an irregular basis by the parent to the child;

(C) educational loans or grants, such as scholarships, to the child if provided for purposes other than regular maintenance;

(D) child support payments received by or forwarded to the Office of the Attorney General.

(7) Lump-sum Income. Nonrecurring lump-sum payments received after certification for foster care assistance are generally considered as countable income. Exceptions are detailed in §§3.3208 – 3.3213 of this title (relating to Income) in the AFDC chapter of rules. If the lump-sum payment plus other countable income for a month is equal to or greater than the cost of foster-care maintenance, the child is ineligible for a period of time. The period of ineligibility is determined by dividing the amount of the lump-sum payment and other countable income by the monthly cost of care. The resulting whole number is the number of months the child is ineligible for foster care assistance. Any remaining amount from this division is considered as income the first month after the period of ineligibility.

(8) Social Security number. The child must have, or must have applied for, a Social Security number, if eligible.

§700.317. Additional Eligibility Requirements for Title IV-E Foster Care.

(a) Besides the general eligibility requirements specified in §700.316 of this title (relating to Eligibility Requirements for Title IV-E, MAO, and State-paid Foster Care Assistance), a child must

meet the following additional requirements to qualify for Title IV-E foster care assistance.

(1) Aid to Families with Dependent Children (AFDC)-related status. At least one of the following conditions must apply.

(A) Using the AFDC eligibility rules in effect on July 16, 1996, the child would have been eligible for AFDC benefits had application been made during the month in which court proceedings were initiated.

(B) At some time during the six-month period before the month in which court proceedings were initiated, the child lived with a relative as specified in paragraph (3) of this subsection; and the child would have received AFDC benefits if he had been living with that relative during the month in which court proceedings were initiated, and if the AFDC eligibility rules in effect on July 16, 1996, were used.

(C) The child lives with his minor parent, and the minor parent is in the Texas Department of Protective and Regulatory Services' (TDPRS's) managing conservatorship. As long as the child continues to live with the minor parent, a separate court-ordered removal is not required for the child to qualify for Title IV-E foster care assistance.

(D) The child was removed from a family that had qualified for the AFDC-Unemployed Parent (AFDC-UP) program during the month in which court proceedings were initiated, if the AFDC eligibility rules in effect on July 16, 1996, were used.

(2) Judicial determination.

(A) In a nonemergency removal, the court must determine that TDPRS made reasonable efforts to prevent removal and to reunify the family.

(B) In an emergency removal, the court must determine either:

(i) that TDPRS made reasonable efforts to prevent removal and to reunify the family; or

(ii) (No change.)

(C) In both emergency and nonemergency removals, the court's original order placing the child in TDPRS's conservatorship must include a statement that removal is in the child's best interest.

(3) (No change.)

(4) Need. The child's family must have been living at subsistence level or below according to Aid to Families with Dependent Children (AFDC) income standards in effect July 16, 1996. If the child has a stepparent living in the home, the stepparent's income is considered according to the rules governing stepparent income for AFDC eligibility in effect July 16, 1996.

(5) Citizenship or alien status. The child must be a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) For purposes of determining eligibility for foster care assistance, TDPRS considers court proceedings initiated when:

(1)-(2) (No change.)

§700.330. Billing and Payment for Foster Care Assistance.

(a) (No change.)

(b) The Texas Department of Protective and Regulatory Services (TDPRS) foster care billing staff use the Child and Adult Protective System to pay TDPRS foster homes and contracted facilities.

(c) If a county pays for foster care for the care of a child who is ineligible for state-provided foster care assistance or if a child's funds are used, the rate must be the same rate as TDPRS pays for the same level of care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716343
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

40 TAC §§700.334-700.336

The repeals are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The repeals implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716355
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter E. Intake, Investigation, and Assessment

40 TAC §700.513, §700.522

The amendment and new section are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment and new section implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.513. Notification about Results.

(a) Required notification in abbreviated and thorough investigations.

(1) Who must be notified. The Texas Department of Protective and Regulatory Services (TDPRS) must notify the following parties about the findings of an abbreviated or thorough investigation unless one of the exceptions specified in subsection (d) of this section apply:

(A) each alleged victim who was interviewed during the investigation;

(B) each custodial parent of each alleged victim;

(C) each non-custodial parent of each alleged victim;

(D) each legal guardian, if one has been appointed, of each alleged victim;

(E) each person identified as an alleged perpetrator; and

(F) the person who reported the alleged abuse or neglect, if his identity is known.

(2) Time frame for providing notice. TDPRS must provide notice to the persons specified in paragraph (1) of this subsection within 15 days after the investigation is closed by the supervisor.

(b) Required notification in administratively closed investigations.

(1) Who must be notified. TDPRS must notify the following parties about the findings of an investigation that was closed administratively, unless one of the exceptions specified in subsection (d) of this section apply:

(A) each custodial parent of each alleged victim;

(B) each non-custodial parent of each alleged victim;

(C) each legal guardian, if one has been reported, of each alleged victim; and

(D) the person who reported the alleged abuse or neglect, if his identity is known.

(2) Time frame for providing notice. TDPRS must provide notice to the parents and guardian specified in paragraph (1) of this subsection no later than 24 hours after the investigation is closed by the supervisor or to the reporter within 15 days.

(c) Optional provision of investigation findings upon request. TDPRS may provide information about the investigation to the custodial and non-custodial parents and legal guardian of any child in the home under investigation, at the parent's or guardian's request, unless one of the exceptions specified in subsection (d) of this section exists. Staff may provide information from the investigation to the extent deemed necessary by TDPRS for the protection and care of the child when such information is necessary to meet the child's needs. Exception: Staff may not release information that is subject to redaction under §700.204 of this title (relating to Redaction of Records Prior to Release.)

(d) Exceptions to providing notification.

(1) Unable to locate. During the investigation, TDPRS was unable to locate the person entitled to notification despite having made reasonable efforts to locate the person.

(2) Safety exception. Notwithstanding requirements to notify certain persons of investigation results, TDPRS shall not provide the notice when TDPRS determines that the notice is likely to endanger the safety of any child in the home, the reporter, or any other person who participated in the investigation of the report. This safety exception does not apply to a designated perpetrator or designated victim perpetrator entitled to receive notice under subsection (f) of this section, or to a former alleged perpetrator entitled to receive notice under subsection (g) of this section.

(3) Law enforcement exception. TDPRS may delay notification of a person entitled to notification under this section if a law enforcement agency requests the delay because timely notification would interfere with an ongoing criminal investigation. TDPRS may delay notification only in those circumstances in which the law enforcement agency agrees to notify TDPRS at the earliest time that the delay is no longer needed. TDPRS must provide the notification within 15 days after the date on which TDPRS is notified that the law enforcement agency has withdrawn the request to delay the notification.

(4) Administrative closure exception. TDPRS must not provide required notifications or optional information about findings to parents and the guardian if a Child Protective Services (CPS) investigation is being closed administratively because the report was referred for investigation to another authorized entry, such as law enforcement or another state agency.

(e) Form of notification. TDPRS's notifications about the findings of an investigation may be either written or oral, except the notifications in paragraphs (1)-(2) of this subsection must be provided in writing:

(1) written notification of the designated perpetrator, or designated victim perpetrator; and

(2) written notification of an alleged perpetrator when all allegations in the case involving the person as an alleged perpetrator have been ruled out.

(f) Required written notification of the designated perpetrator or designated victim/perpetrator. TDPRS must give written notice of the findings of the investigation to everyone who has been identified as a designated perpetrator or designated victim/perpetrator as specified in §700.512(b)(1) of this title (relating to Conclusions About Roles). For a designated victim/perpetrator, the notice is sent to the child's parents.

(g) Required written notification of an alleged perpetrator when all allegations involving the person as an alleged perpetrator have been ruled-out. TDPRS must give written notice of the right to request removal of role information to each person who was identified as an alleged perpetrator when all the allegations in the investigation involving the person as an alleged perpetrator have been ruled out. For a person fitting this category who is a minor, the notice may be sent to the minor's parents.

(h) Notifying the reporter. If the person who reported the alleged abuse or neglect is not a professional working with the family, TDPRS's notification to the reporter discloses only:

(1) that TDPRS investigated the report, and

(2) whether TDPRS provided services to the family during the investigation or plans to provide services to the family after the investigation.

§700.522. Audiotaping or Videotaping Interviews with Alleged Victims.

Texas Department of Protective and Regulatory Services (TDPRS) staff must make a reasonable and good faith effort to audiotape

or videotape interviews with child victims of physical or sexual abuse unless good cause exists not to audiotape or videotape the interviews. Good cause exceptions to audiotaping or videotaping interviews include, but may not be limited to, the reasons specified in paragraphs (1)-(8) of this section.

(1) The alleged victim cannot communicate verbally at the time of the interview because of his level of functioning or because of any other physical or mental or emotional impairment.

(2) The alleged victim is over age 12 and is able to provide a written statement about alleged abuse.

(3) The alleged victim refuses to be interviewed on audiotape or videotape, and TDPRS determines that the only reasonable way to obtain an interview with the child is to conduct the interview without audiotaping or videotaping it.

(4) The alleged physical abuse to the child does not appear to be likely to endanger the child's life or to result in permanent functional impairment, death, or disfigurement if untreated.

(5) Certain corroborating evidence exists as to the identity of the perpetrator, such as an admission by an alleged perpetrator, a statement by a third party witness to the abuse, or physical evidence.

(6) The interview is for purposes other than to conduct the initial investigative interview of the child victim. The initial investigative interview is the first thorough interview which is conducted in the investigation for the purpose of obtaining the facts as reported by the child victim about the reported allegations.

(7) TDPRS may accept an initial investigative interview of the child victim which was conducted by another entity rather than TDPRS conducting this initial investigative interview. In this instance, good cause exists for the interview not having been audiotaped or videotaped when the substitute initial investigative interview was:

(A) audiotaped or videotaped; or

(B) not audiotaped or videotaped but a good cause exception as outlined in this section exists for the substitute initial investigative interview not having been audiotaped or videotaped.

(8) Audiotaping or videotaping the interview would be contrary to the child victim's best interest, for reasons that include, but are not limited to, the reasons specified in subparagraphs (A)-(E) of this paragraph:

(A) Audiotaping or videotaping the interview would unnecessarily delay obtaining the interview.

(B) Audiotaping or videotaping the interview would unnecessarily interfere with the child's disclosure of abuse.

(C) Audiotaping or videotaping the interview would result in unnecessary multiple initial investigative interviews.

(D) The child's therapist or doctor recommends against the interview being audiotaped or videotaped because doing so would be contrary to the child's emotional health or condition.

(E) The physical location where it is reasonable to conduct the interview is not conductive to audiotaping or videotaping the interview.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716354
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter K. Court-Related Services

40 TAC §700.1105

The amendment is adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1105. Diligent Search for Missing Parents.

(a) When the whereabouts of one or more parents of a child in the Texas Department of Protective and Regulatory Services' managing conservatorship is unknown, Child Protective Services must make a diligent search for:

(1) each missing parent.

(2) (No change.)

(b) In cases filed after September 1, 1997, where a child has one or more alleged biological fathers whose identity is unknown or whose identity is known but whose whereabouts is unknown, a request to search the Paternity Registry (a division of the Texas Department of Health's Bureau of Vital Statistics) must be completed, in addition to a diligent search for each alleged biological father.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716353
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter M. Substitute Care Services

40 TAC §§700.1310, 700.1314, 700.1315, 700.1332

The amendments are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1310. Permanency Planning.

(a) Definition. Permanency planning consists of:

(1) the identification of a safe and permanent living situation as the goal towards which Child Protective Services (CPS's) services to a child (and usually to the child's family) are directed; and

(2) (No change.)

(b) (No change.)

(c) Selecting a goal. To establish a permanency plan for a child, CPS tries to select the permanency-planning goal that best serves the child's interest and long-term needs, including the child's needs for belonging, stability, and continuity of care. To this end, the worker must assess the child's needs, then identify the least disruptive available goal that is likely to meet those needs without compromising the child's safety.

(d) Documenting the goal. The permanency goal selected for a child is recorded in the:

(1) case plan (child and family service plan); and

(2) permanency reports submitted to the court for the permanency hearings conducted while a case is in temporary legal status.

(e) Revising the plan. If a previously established permanency-planning goal proves to be unrealistic, the goal must be changed.

(f) Finalizing the plan. No later than five months after the date that TDPRS was named temporary managing conservator, TDPRS must finalize what permanency goal it wants to pursue for a child so that:

(1) a recommendation can be made during the Permanency Planning Team (PPT) staffing held prior to the first permanency court hearing;

(2) a recommendation can be made for the first court permanency hearing held six months from the date that TDPRS was named temporary managing conservator (TMC); and

(3) appropriate actions can be taken to obtain a dismissal, a final order, or an extension by the Monday after the anniversary date that TDPRS was named temporary managing conservator.

§700.1332. The Family's Service Plan.

(a) Time frame. Within 45 days after a child's placement in substitute care, Child Protective Services (CPS) must develop a written plan for services to the family unless:

(1)-(2) (No change.)

(b) (No change.)

(c) Required content. The family's service plan must:

(1)-(3) (No change.)

(4) describe the services CPS must provide to help the family complete those tasks; and

(5) indicate how CPS will evaluate the family's completion of those tasks.

(d) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716352
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter O. Foster and Adoptive Home Development

40 TAC §§700.1501, 700.1502, 700.1504-700.1506

The amendments and new section are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments and new section implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1502. Foster and Adoptive Home Inquiry and Screening.

The Texas Department of Protective and Regulatory Services' (TDPRS') policies for responding to inquiries and screening and approval of foster and adoptive homes are as follows:

(1) Responding to inquiries. TDPRS receives inquiries as a result of recruitment efforts by staff, volunteers, foster and adoptive parents, foster and adoptive parent associations, and other organizations that work with TDPRS. When inquiries are received, staff should provide a written response within 10 working days to provide families information about the process of becoming a foster or adoptive parent with TDPRS.

(2) Screening and approval of foster and adoptive homes.

(A) Age. All applicants must be at least 21 years of age or older. Age is evaluated in relation to life expectancy and maturity. The applicants' life expectancy must be long enough for the applicants to be able to raise the child to adulthood. Applicants who are nearing retirement age usually are only considered and approved for adolescent children.

(B) Marriage. If married, both spouses must apply and their license or declaration of marriage must be recorded. If separated and not divorced, adoptive applicants must finalize the divorce prior to being approved as an adoptive parent.

(C) Length of marriage. Couples must be married at least two years before TDPRS accepts an adoption application, unless the following exception is made. Exception: If the couple cohabitated for two years prior to the marriage or obtained a civil registration of common law marriage for the length of time required, the worker should assess the impact of the marriage on the stability of the couple's relationship to determine the appropriateness of making an exception.

(D) Single parents. Single parents are evaluated in terms of their ability to nurture and provide for a child without the assistance of a spouse. Placement with a single parent is considered the best plan for some children.

(E) Disabilities. Disabilities are evaluated in relation to the applicants' adjustment to the disability and the limits, if any, the disability imposes on the applicants' ability to care for a child.

(F) Residence. Adoptive home studies are started only if the applicants will live in the community long enough for PRS to complete a study and make a placement. Exceptions are made in unusual situations which involve a child with special needs if another licensed child placing agency in the new community agrees to complete the adoption services.

(G) Adoption by foster families. Foster families are evaluated using the same criteria applied to any other adoptive applicants. The home study must be updated to meet the minimum standards for adoptive homes. The evaluation focuses on the family's demonstrated skill and ability to parent the children TDPRS has placed in the family's care and determines the attachment the family and the child have to each other.

(H) Family's ability to help the child. Applicants are evaluated based on their ability to:

(i) help the child:

(I) develop a sense of identity consistent with the child's racial, cultural, and ethnic background; and

(II) learn to cope with difficulties that may arise from racial, cultural, or ethnic differences, both within and outside the adoptive family; and

(ii) develop a plan for helping the child manage the issues described above as the child reaches developmental milestones.

(I) Finances. Although there are no specific income requirements, the applicants must have enough income, and be able to manage it well enough, to meet the child's basic material needs. Income is also evaluated in terms of past and present management.

(J) Health. The applicants' physical and mental health must be sufficient to assume parenting responsibilities. Physical and mental conditions are considered to protect the child against another loss of parenting through death, incapacity, or repetition of abuse or neglect.

(K) Religion. There are no specific religious requirements. Applicants are evaluated based on:

(i) Their willingness to respect and encourage a child's religious affiliation.

(ii) Their willingness to provide a child opportunity for religious, spiritual, and ethical development.

(iii) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.

(L) Discipline. Physical discipline may not be used on a child in any TDPRS foster or adoptive home prior to consummation. TDPRS evaluates applicants based on their willingness and ability to:

(i) recognize and respect differences in children, especially children who have been abused or neglected;

(ii) employ methods of discipline that suit the particular needs and circumstances of each child; and

(iii) employ methods of discipline that conform to the policies specified in §700.1340(c) of this title (relating to Special Issues).

(M) Criminal history.

(i) Criminal history checks are required for all persons 18 years old and older who live in the applicant's home. A criminal history check must be completed for persons who have child care responsibilities for the children in the managing conservatorship of TDPRS. Criminal history is evaluated in terms of the potential danger it presents to placement, rearing, and protection of children. Persons who have been convicted of offenses against the person, offenses against the family, public indecency, or a felony violation of the Texas Controlled Substances Act must submit proof of rehabilitation to TDPRS for their application to be considered further.

(ii) TDPRS staff may provide a copy of the criminal records check received from the Texas Department of Public Safety or local law enforcement to the court when the court will accept the material in lieu of ordering adoptive parents to provide their own criminal records check to the court.

(iii) Criminal history checks for foster parents are required to be updated every two years to determine if a criminal action has occurred since the subsequent information was obtained from the Texas Department of Public Safety or local law enforcement.

(iv) Criminal history checks for adoptive parents must have been completed within one year of the time the court orders a criminal history based on a petition filed for adoption. If the criminal history is not within one year, a new criminal history is required.

(N) Adoptive home studies - fertility. Fertility assessments are required only if TDPRS believes the couple needs to know more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.

§700.1504. Approval of Foster and/or Adoptive Home Study.

The Texas Department of Protective and Regulatory Services (TDPRS) evaluates applicants based on the applicants' ability to care for specific children needing placement. TDPRS approves home studies based on an evaluation of the applicants' total situation; their flexibility in all areas of life; their sensitivity and understanding of children's needs, and their ability to meet the developmental, maintenance, and protection needs of children in TDPRS's managing conservatorship. The written assessment or home study of the family must be completed within four months beginning on the date all information and documentation is returned by the family or on the date of the last pre-service training session. If these two dates are different, staff may use the later date to determine the time frame for completion of the home study. Staff must submit the home study to the supervisor for approval. Supervisors must approve or disapprove the home study within 30 days. Staff must inform the family that they need to return all information and necessary documents within two weeks after pre-service training has ended or their case will be closed. Staff need to inform the family that they may re-open their application to become adoptive parents at a later time, if their case was closed for failure to return all necessary documents. Families who reapply within one year of completing pre-service may need to complete an overview training. This decision must be made by the supervisor. Reasons for this decision must be documented in the family's record. Families who reapply after one year of pre-service will need to attend pre-service training again.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716351
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter Q. Purchased Protective Services

40 TAC §700.1718

The amendment is adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendment implements the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716350
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 10, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Chapter 720. Twenty-Four Hour Care Licensing

Subchapter I. Standards for Assessment Services

40 TAC §§720.600-720.608

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§720.600-720.608, in its 24-Hour Care Licensing chapter. New §720.604 is adopted with changes to the proposed text published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10265). New §§720.600-720.603 and 720.605-720.608 are adopted without changes to the proposed text and will not be republished. TDPRS is adopting the new sections in new Subchapter I, Standards for Assessment Services.

The justification for the new sections is to include minimum standards for assessment services to determine the appropriate type of placement for a child in the care or custody of TDPRS who requires substitute care. The new rules also implement legislation passed in the 75th Legislative Session that requires the assessment services for these children (Texas Family Code) and legislation amending Human Resources Code, Chapter 42 (the licensing statute), that requires TDPRS to regulate these services.

The new sections will function by reducing the risk of placement breakdowns for children in the care or custody of TDPRS. It is anticipated that the use of assessment services regulated under these sections will provide the information needed to make more appropriate decisions about the long term substitute care placement needs of the children.

Two sets of comments were received regarding adoption of the new sections. One set of comments, from a member of the Advisory Committee on Child Care Administrators and Facilities, supported all proposed rules. The second set of comments from a residential child care provider raised several questions about the implementation of the proposed rules. One question concerned whether a licensed emergency shelter met the definition of a licensed residential child care facility. Licensed emergency shelters do meet this definition and may be authorized to provide assessment services. Other questions concerned service time frames and when a child would be considered as admitted to an assessment services program since a child could be in emergency shelter type care for several days before assessment services were requested. The time frames apply to the time the child is admitted to the assessment services program, not to the date when the child entered the facility. Another question concerned the use of specific forms in determining a child's basic health status. The rules detail the content that must be covered. Providing the assessment is conducted under the supervision of a licensed physician and includes the required information; the "form" on which the information is reported would not impact compliance with the rule. Two questions indicated confusion about the "primary caretaker." The intent of the requirements for primary caretaker involvement relate to input from the person (child care worker or workers, foster parent) who is providing direct care and supervision for the child while the child is in the assessment services program. The comments also included questions about the qualifications of the person responsible for the assessment services program. The concern was that an emergency shelter, for example, might be a very appropriate facility to provide assessment services but the qualifications in the proposed rules were stated in terms of types of staff an emergency shelter would be unlikely to employ. In response to these comments, ˇ720.604(b) is revised to broaden and clarify the required qualifications.

The new sections are adopted under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The new sections implement the HRC, Chapters 40 and 42.

§720.604. Staffing for Assessment Services.

(a) The facility or child-placing agency must have a person responsible for the assessment services program.

(b) The person responsible for the assessment services program must have at least a master's degree in a human services or mental health field from an accredited college or university and must have at least one of the requirements specified in paragraphs (1)-(3) of this subsection:

(1) three years of supervised child-placing experience, one year of which must have been placing children in foster care; or

(2) three years of supervised experience providing treatment services to emotionally disturbed persons, one year of which must have been in a residential setting providing services to children; or

(3) three years of professional level residential child care experience. "Professional level residential child care experience" includes intake and admission studies, treatment and service planning, and other services provided for children. It does not include direct child care or supervision of direct child care workers.

(c) The facility or child-placing agency must have sufficient appropriately qualified professional staff available to provide assessment services. This must be documented in a written staffing plan. The plan must document that the number, qualifications, and responsibilities of professional staff are appropriate to the size and scope of the assessment services program.

(d) The staffing plan must be implemented.

(e) The assessment services program must have available evaluation services from qualified and licensed medical, dental, psychological, psychiatric, social work, and education professionals.

(f) All assessment services must be provided in accordance with the provisions of §§720.606-720.608 of this title (relating to Assessment Plan, Assessment Services, and Assessment Report). The assessment services program must document the qualifications and credentials of all assessment service providers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716347
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§725.1802, 725.2001, and 725.2026, in its General Licensing Procedures chapter. The amendment to §725.1802 is adopted with changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10268). The amendments to §725.2001 and §725.2026 are adopted without changes to the proposed text and will not be republished. Section 725.4020, which was proposed with these sections in the October 17, 1997, issue of the *Texas Register*, will be reconsidered by the board.

The justification for the amendments is to implement new child-care licensing requirements that were enacted by the 75th Legislature. These include requiring TDPRS to make certain licensing functions which are available for use with licensed facilities applicable to registered and listed homes; requiring a facility or family home to cease operation during the time of judicial appeal if the revocation or denial of the license, listing or registration is based on violations which pose a risk to the health and safety of children; listing the standards violations which pose a risk to the health and safety of children; stating that a court may issue injunction to allow operation pending an appeal if the rule violations do not pose such a risk; and clarifying that TDPRS must publish in the local newspaper action taken to suspend or revoke a license, registration or listing.

The amendments will function by increasing protection for children in out-of-home care.

Seven comments were received regarding adoption of the amendments. Six comments from members of the Advisory Committee on Child Care Administrators and Facilities approved the proposed rules as written. One comment from a child care provider suggested adding a time frame to the requirement for facilities to notify parents when TDPRS gives notice that a license/registration/listing is being revoked or suspended. TDPRS has incorporated this change in §725.1802. The same child care provider suggested that §725.1802 be reworded for clarity. TDPRS does not believe additional rewording is needed because of changes already incorporated and required *Texas Register* formatting requirements.

Subchapter S. Administrative Procedures

40 TAC §725.1802

The amendment is adopted under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code §§42.001- 42.077.

§725.1802. Notice of Action Against a Facility/Registered or Listed Family Home.

If a facility/registered or listed family home receives written notice from the department that its license/registration/listing is being revoked or suspended, the facility/registered or listed family home must send a letter within five days of receiving the notice by certified mail to inform the parents or guardians of each child in care of this action. Parents or guardians seeking to enroll children after the facility/registered or listed family home has received a revocation or suspension notice must also be notified prior to enrollment. The effective date of the revocation or suspension is the date the facility/registered or listed family home receives the notice. The department will publish a notice of the revocation or suspension in the local newspaper. The department will send the notice to the newspaper for publication within 10 days of receipt of the final order following the appeal of the revocation or suspension. If there is no appeal filed, the department will send the notice within 10 days of the exhaustion of the administrative remedies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716349
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter U. Day Care Licensing Procedures

40 TAC §725.2001, §725.2026

The amendments are adopted under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendments implement the Human Resources Code §§42.001- 42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716348
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter EE. Agency and Institutional Licensing Procedures

40 TAC §§725.3079-725.3083

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§725.3079-725.3083, without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10274).

The justification for the new sections is to ensure that, in counties with less than 300,000 population, the community has opportunity for input before a new residential child care facility is opened or an existing facility increases capacity. The new sections implement legislation passed in the 75th Legislative Session requiring the public notice and hearings.

The new sections will function by ensuring that there are adequate community resources available to meet the needs of children in substitute care in locations where a new facility plans to open or an existing facility plans to increase capacity.

Two comments were received regarding adoption of the new sections. One comment from a member of the Advisory Committee on Child Care Administrators and Facilities noted concerns with some of the provisions of the legislation, which is beyond the authority of TDPRS. A comment was received from an individual representing eight land owners and residents of Lampasas County supporting the proposed rules.

The new sections are adopted under the Human Resources Code (HRC), Chapters 40 and 42, which describes the department's regulatory and rulemaking authority.

The new sections implement the HRC, Chapters 40 and 42.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716359
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 438-3765

♦ ♦ ♦

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

♦ ♦ ♦

PROPOSED ACTION

The Commissioner of Insurance, at a public hearing under Docket Number 2332 scheduled for January 29, 1998 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1998 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-1297-39-I) was filed on December 3, 1997.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1998 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Reference Number A-1297-39-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716594

Lynda H. Nesenholtz

Assistant General Counsel

Texas Department of Insurance

For further information, please call: (512) 463–6327

ADOPTION

TEXAS DEPARTMENT OF INSURANCE EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance ("Commissioner") at a public hearing under Docket Number 2313 on December 3, 1997, held at 10:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments to the Texas Statistical Plan for Residential Risks ("Residential Plan") and to the Texas Commercial Lines Statistical Plan ("Commercial Plan") as proposed by the staff of the Texas Department of Insurance ("TDI'). The amendments are necessary to implement S.B. 1499 passed by the 75th Legislature which amended the Texas Insurance Code Article 5.13-2 to include Farm and Ranch and Farm and Ranchowners coverages in the commercial lines of insurance. Staff's petition (Reference P-1097-33-I) proposing the amendment was filed with the TDI Chief Clerk on October 14, 1997, and notice of the filing was published in the October 24, 1997, issue of the *Texas Register* (22 TexReg 10520).

The staff proposed the amendment of the Texas Statistical Plan for Residential Risks ("Residential Plan") to delete the Farm and Ranch ("FR") and Farm and Ranch Owners ("FRO") reporting provisions from the Residential Plan and the amendment of the Texas Commercial Lines Statistical Plan ("Commercial Plan") to adopt two new chapters relating to FR and FRO reporting. The adopted changes are necessary in order to comply with the 75th Legislature's passage of S.B. 1499, which amended the Texas Insurance Code Article 5.13-2 to include FR and FRO policies as commercial lines insurance policies. The adopted amendments also include the incorporation of minor changes to the statistical plans for consistency with the existing procedure.

One set of comments was received concerning the need to further amend the Commercial Plan to support new programs concerning the FR and FRO policies. In addition, the commenter expressed concern that a different statistical agent from the commercial lines statistical agent would collect FR and FRO data. The department agrees that the Commercial Plan should be further amended and is committed to proposing the necessary amendments in the future. The department also recognizes that once the Commercial Plan is further amended,

it may be appropriate to conduct a competitive process to select a statistical agent for the FR and FRO, based on the specifications set out in the further amendments.

The Commissioner adopted all of the amendments described herein at the December 3, 1997 public hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69. The Insurance Code, Articles 5.96 and 21.69 authorize the filing of this petition. Article 5.96 authorizes the Commissioner to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans and policy and endorsement forms for fire and allied lines of insurance. Article 21.69 authorizes the Commissioner to contract with or designate a qualified organization to serve as a statistical agent to gather data from reporting insurers under a statistical plan promulgated by the Commissioner. Article 21.69 also authorizes the Commissioner to adopt rules necessary to accomplish the purposes of that article.

The amendments as adopted by the Commissioner are filed with the TDI Chief Clerk under Reference Number P-1097-33-I and are incorporated by reference by Commissioner's Order 97-1223.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, TDI will notify all insurers writing the affected lines of insurance in this state.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716423
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: January 5, 1998
Proposal publication date: October 24, 1997
For further information, please call: (512) 463–6327

♦ ♦ ♦

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Thursday, December 18, 1997, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standard Review Committee

AGENDA:

A. Informal Conference:

1. File Number 97–05–08L — 9:00 a.m.

2. File Number 97–05–07L — 10:00 a.m.

B. Investigations:

1. File Numbers 97–01–17L and 97–01–16L

2. File Number 97–01–21L

3. File Number 97–08–63L

C. Discussion Items:

1. File Number 94–02–35L; 2. File Number 94–10–57L; 3. File Number 97–06–02L; 4. File Number 97–05–18L; 5. File Number 97–08–53L; 6. File Number 97–09–05L; 7. File Number 97–05–19L; 8. File Numbers 97–07–17L; 97–07–18L and 97–07–19L.

Contact: Paul Gavia, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701–3900, (512) 305–7845.
Filed: December 3, 1997, 4:28 p.m.

TRD-9716223

♦ ♦ ♦

Texas Department of Agriculture

Tuesday, December 16, 1997, 10:30 a.m.

TS and GRA Board Room, 233 West Twohig

San Angelo

Sheep and Goat Predator Management

AGENDA:

Opening Remarks and Welcome

Review and approval on minutes of last meeting- October 15, 1997; Review and approval of Fiscal Affairs

Reports of Officers and Directors

Discussion and Action: New Business: Report of telephone messages; Review modification of By-laws to reflect name Change; Annual Reports/Renewal Requests; Addition to Hot-Spots Request; Special Requests, Irion-Rengan Predator Club, Menard County Animal Damage Control Committee; Scheduling of next meeting.

Unfinished Business: Review Coping with Bobcats Video; Review committee to research pro's and con's of bounties; Review status of Texas Animal Health Audit 1997; Review Status of Tim Turner-information on helicopter for sale; Report from Gary Nunley-Animal Damage Control.

Discussion: Other Business

Adjourn

Contact: Ms. Minnie Savage, 233 West Twohig, San Angelo, Texas 76903–3543, (915) 659–8777.
Filed: December 8, 1997, 11:43 a.m.

TRD-9715456

♦ ♦ ♦

Texas Commission on Alcohol and Drug Abuse (TCADA)

Friday, December 12, 1997, 9:00 a.m.

4705 Troup Highway, Smith County Council on Alcohol and Drug Abuse

Tyler

Regional Advisory Consortium, (RAC) Region 4

AGENDA:

Call to order; welcome and introductions of guests; membership plan; new member recommendations; comments on service delivery plan; old business; new business; public comment; and adjournment.

Contact: Heather Harris, 9001 North IH 35, Suite 105, Austin, Texas 78753, (512) 349–6669.
Filed: December 4, 1997, 12:06 p.m.

TRD-9716248

♦ ♦ ♦

Friday, December 12, 1997, 11:00 a.m.

5300 Padre Boulevard, Ro-Van's Restaurant and Bakery

South Padre Island

Regional Advisory Consortium, (RAC) Region 11

AGENDA:

Call to order; welcome and introductions of guests; new member recommendations; comments on service delivery plan; border initiative update; old business, new business; public comment; and adjournment.

Contact: Heather Harris, 9001 North IH 35, Suite 105, Austin, Texas 78753, (512) 349–6669.
Filed: December 4, 1997, 12:06 p.m.

TRD-9716247

♦ ♦ ♦

Thursday, December 18, 1997, 11:00 a.m.

6400 Delta, Juvenile Probation Department

El Paso

Regional Advisory Consortium, (RAC) Region 10

AGENDA:

Call to order; welcome and introductions of guests; TCADA update; comments on statewide service delivery plan; BHO update; old business, new business; public comment; and adjournment.

Contact: Heather Harris, 9001 North IH 35, Suite 105, Austin, Texas 78753, (512) 349–6669.
Filed: December 9, 1997, 12:00 p.m.

TRD-9716532

♦ ♦ ♦

Texas Animal Health Commission

Tuesday, December 16, 1997, 11:00 a.m.

2105 Kramer Lane

Austin

Commissioner Briefing and Planning Session

AGENDA:

I. Discussion relating to legislative issues.

II. Discussion relating to the development of a legislative plan for 1998–1999.

III. Discussion relating to the review of the agency's organizational chart.

IV. Discussion relating to strategic planning.

Contact: Tiffany Norvell, P.O. Box 12966, Austin, Texas 78711–2966; tiffanyn@tahc.state.tx. us
Filed: December 5, 1997, 2:44 p.m.

TRD-9716357

♦ ♦ ♦

The State Bar of Texas

Friday, December 12, 1997, 8:30 a.m.

The Texas Law Center, 1414 Colorado

Austin

The Texas Commission for Lawyer Discipline

AGENDA:

PUBLIC SESSION: Call to Order/Introductions/Approve Minutes.

CLOSED SESSION: Discuss appropriate action with respect to pending evidentiary cases; pending and potential litigation; special counsel assignments; and the performance of the General Counsel/ Chief Disciplinary Counsel and staff.

PUBLIC SESSION: Discuss and authorize General Counsel to make, accept or reject offers or take other appropriate action with respect to matters discussed in closed session/Review and discuss the outcome of recent disciplinary trials/Report of Chief Disciplinary Counsel on those matters unresolved in prior meetings requiring additional information and take appropriate action, if any/Review, discuss and take appropriate action on: request by a partner of a Special Counsel to represent a respondent attorney in a disciplinary matter; statistical and status reports of pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement, including disability procedures; budget and operations of the Commission and the General Counsel's Office; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/Discuss future meetings/Discuss other matters as appropriately come before the Commission/Public comment/Adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1–800–204–2222.
Filed: December 4, 1997, 3:58 p.m.

TRD-9716291

♦ ♦ ♦

Texas Boll Weevil Eradication Foundation

Thursday, December 18, 1997, 10:00 a.m.

3103 Oldham Lane

Abilene

Management Structure, Operations and Need Subcommittee

AGENDA:

Call to Order

Opening Remarks and Introductions

Discussion and Recommendations

Human Resource Management Issues

Adjourn

Contact: Katie Dickie Stavinoha, P.O. Box 12847, Austin, Texas 78711, (512) 463–7593.
Filed: December 10, 1997, 11:48 a.m.

TRD-9716600

♦ ♦ ♦

Texas Commission for the Deaf and Hard of Hearing

Friday, December 12, 1997, 9:00 a.m.

Brown Heatly Building, 4900 North Lamar, Room 7230

Austin

Board

AGENDA:

The Commission will discuss and possibly take action on the following items: Call to Order; Establish a Quorum; Public Comment; Members of the public are invited to make comments not to exceed five minutes on subjects relevant to the business of the Commission; Approval of Minutes of November 21, 1997 Meeting; ACTION: Executive Directors's report including Discussion and Possible Action Regarding a Memorandum of Understanding with the Texas Education Agency- ACTION: Board for Evaluation of Interpreters Report including Approval of Recertification; Direct Services Report including Discussion and Possible Action on Appointment of Hard of Hearing Task Force Members- ACTION, and Camp "SIGN Update; Specialized Telecommunications Devices Assistance Program Report including Discussion and possible Action on Basic Devices- ACTION, and Discussion and Possible Action on Voucher Value for Basic Devices —ACTION: Announcements, and Adjournment.

Contact: Margaret Susman, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451–8494.
Filed: December 4, 1997, 11:40 a.m.

TRD-9716243

♦ ♦ ♦

Texas School for the Deaf

Friday, December 12, 1997, 8:30 a.m.

601 Airport Boulevard

Austin

Governing Board Policy Committee

AGENDA:

(a) Policy Amendments

BDA — Board Internal Organization: Officers and Officials

BDAC — Board Officers and Officials: Duties and Requirements of Vice President

BDAD — Board Officers and Officials: Duties and Requirements of Secretary

BDAE — Board Officers and Officials: Funds Depository

BDE — Board Internal Organization: Consultants

CDA — Other Revenues: Investments

DEE — Compensation and Benefits: Expense Reimbursement

DR — Termination of Contract

(b) Policy Adoption

BDB — Board Internal Organization: Internal Committees

DEG — Compensation and Benefits: Retirement Program

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 462–5303.
Filed: December 4, 1997, 3:22 p.m.

TRD-9716266

♦ ♦ ♦

Friday, December 12, 1997, 10:00 a.m.

601 Airport Boulevard

Austin

Governing Board Budget and Audit Committee

AGENDA:

(a) Consideration of Investment Report for period 9/1/97–11/28/97

(b) Consideration of Internal Auditing Function: Employment or Outsourcing

(c) Consideration of Public Funds Investment Act Audit

(d) Consideration of Transportation Audit

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 462–5303.
Filed: December 4, 1997, 3:22 p.m.

TRD-9716267

♦ ♦ ♦

Friday, December 12, 1997, 1:00 p.m.

601 Airport Boulevard

Austin

Governing Board

AGENDA:

1. Call to Order

2. Approval of Minutes from the October 10, 1997 Meeting

3. Audience speakers to Address the Board; Introduction of Visitors

4. Business for Information Purposes — a. Executive Director's Report b. Facility Construction Status Report

5. Board Reports and Action Items

a. Standing Committee Reports

(1) Policy Committee

(a). Policy Amendments — BDA — Board Internal Organization: Officers and Officials

BDAC — Board Officers and Officials: Duties and Requirements of Vice President

BDAD — Board Officers and Officials: Duties and Requirements of Secretary

BDAE — Board Officers and Officials: Funds Depository BDE Board Internl Organization: Consultants

CDA — Other Revenues: Investments

DEE — Compensation and Benefits: Expense Reimbursement

CDA — Other Revenues; Investments; DEE —Compensation and Benefits: Expense Reimbursement

DF — Termination of Contract

(b) Policy Adoption — BDB — Board Internal Organization: Internal Committees

DEG — Compensation and Benefits: Retirement Program

b. Standing Committee Reports (Continued)

(2) Budget and Audit Committee

(a) Consideration of Investment Report for period 9/1/97 — 11/28/97

(b) Consideration of Internal Auditing Function: Employment or Outsourcing

(c) Consideration of Public Funds Investment Act Audit

(d) Consideration of Transportation Audit

c. Consent Agenda (1) Consideration of Professional Contracts

d. Other Action Items (1) Consideration of the Board Calendar of Meetings for 1997–1998 for a Special Focus Meeting: Student Outcomes (2) Consideration of Evaluation Instrument for Executive Director (3) Consideration of Appraisal Instruments for Administrators (4) Consideration of Board response to Anonymous Mail and Phone Calls (5) Consideration of Requests for Office Space by the TSD Alumni Association (6) Selection of Recording Secretary for 1998 (7) Selection of Governing Board Officers for 1998

(6. Closed Meeting(s) a. Consideration of Employment of Technology Director

(b) Recommendation for Proposed Action regarding Employment Contract — Eric Gustavus

7. Reports or Discussion by Individual Board Members

8. Adjournment

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 462–5303.
Filed: December 4, 1997, 3:22 p.m.

TRD-9716265

♦ ♦ ♦

Texas Department of Economic Development

Tuesday, January 6, 1998, 2:00 p.m.

1700 North Congress, SFA Building, First Floor, Room 118

Austin

Tourism Advisory Committee

AGENDA:

The Texas Department of Economic Development Tourism Advisory Committee will be holding its quarterly meeting at the Texas Department of Economic Development, Stephen F. Austin Building. The Tourism Advisory Committee will adopt minutes of the previous committee meeting. Tourism managers will present quarterly project updates as well as update the Tourism Advisory Committee on Tourism Division activities. The TAC Marketing and Travel Guide Subcommittee will present reports to the Tourism Advisory Committee. State agencies and industry associations will also present reports to the Tourism Advisory Committee.

* Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Hector Herrera at (512) 462–9191 at least two days before this meeting so that appropriate arrangements can be made. Please contact Hector Herrera at (512) 462–9191 if you need assistance in having English translated to Spanish.

Contact: Hector Herrera, 1700 North Congress Avenue, Austin, Texas 78711, (512) 936–0198.
Filed: December 5, 1997, 9:36 a.m.

TRD-9716309

♦ ♦ ♦

Advisory Commission on State Emergency Communications

Wednesday, December 17, 1997, 1:00 p.m., Rescheduled from December 12, 1997

333 Guadalupe Street, Room 1264

Austin

Poison Center Coordinating Committee

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Approval of the September 4, 1997 Meeting Minutes; Information Services (IS) Update; Subcommittee Reports: A. Report of the Subcommittee on Education, Appoint Chairperson, B. Report of the Medical Directors Subcommittee, Appoint Chairperson; C. Report of the Research Subcommittee, D. Report of the Operations Subcommittee, Appoint Chairperson; Election of PCCC Vice Chairperson; Advisory Committee's Sunset Memorandum from State Comptroller, 1998 TPCN Annual Conference; Outside Funding for Public Education; Update on SPI certification Study Guide; Senate Bill 388 Report; Miscellaneous; Set Next Meeting Date. Adjourn.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305–6933.
Filed: December 3, 1997, 3:15 p.m.

TRD-9716205

♦ ♦ ♦

State Employee Charitable Campaign

Thursday-Friday, December 11–12, 1997, 10:00 a.m. and 10:30 a.m. respectively

2433 Ridgepoint Drive, Room 226

Austin

State Policy Committee

AGENDA:

Thursday, December 11, 1997

AGENDA:

Thursday, December 11, 1997

1. Call to Order

2. Review of minutes

3. State Advisory Committee Report

4. Comptroller's Report

5. State Campaign Manager Report

6. SCM Application

7. Officer's Reports

8. Chair's Report

9. Other Business

10. Recess for the SPC Retreat

Friday, December 12, 1997

1. Reconvening of the SPC

2. Retreat Committee Reports and Recommendations

3. Next Steps

4. Release of Eligibility Applications

5. Next Meeting Date

6. Other Business

7. Adjourn

Contact: Mike Terry, 823 Congress Avenue, Suite 1103, Austin, Texas 78701, (512) 478–6601, fax: (512) 478–2572.
Filed: December 3, 1997, 3:38 p.m.

TRD-9716219

♦ ♦ ♦

General Land Office

Wednesday, December 17, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

School Land Board- Special Meeting

AGENDA:

Approval of previous board meeting minutes; pooling applications: Joaquin Field, Shelby Co.; N. Bob West Field, Zapata Co.; Wildcat Field, Webb Co.; direct land sales, File 152805 and File 110254, Moore Co., and File 154678, Bastrop Co.; coastal public lands, commercial easement renewal applications and amendments, Aransas Bay, Aransas Co.; Galveston Bay, Chambers Co.; easement applications and renewals, Dickinson Bayou, Galveston Co.; Colorado River, Matagorda Co.; Copano Bay, Aransas Co.; Clear Lake, Harris Co.; Laguna Madre, Cameron Co.; West Galveston Bay, Galveston Co.; structure (cabin) permits renewals, terminations and requests, Laguna Madre, Kleberg Co.; Laguna Madre, Cameron Co.; and Laguna Madre, Willacy Co.; Closed Session and Open Session- consideration of audit compromise and settlement agreement between the State of Texas and Conoco, Inc. and associated waiver of penalties and interest; Closed Session and Open Session-status report, evaluation and analysis by the General Land Office's legal counsel regarding: (i) potential litigation of royalty under payment claims against TransTexas Gas Corporation and its successor lessees; and (ii) the ongoing settlement discussion regarding such claims; Closed Session and Open Session — consideration of proposal to acquire and lease 3.294 acres in San Antonio, Bexar County, being Lot 18, Sumner Suites Subdivision; Closed Session- pending or contemplated litigation, or settlement offers.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463–5016.
Filed: December 8, 1997, 3:06 p.m.

TRD-9716484

♦ ♦ ♦

Texas Department of Health

Tuesday, December 16, 1997, 9:00 a.m.

American Cancer Society, Texas Division, Inc. Headquarters Building, 2433 Ridgepoint Drive

Austin

Prostate Cancer Advisory Committee

AGENDA:

The Committee will introduce members and will discuss and possibly act on: approval of minutes of the October 1997 meeting; prostate cancer education program; Texas American Cancer Society Prostate Cancer Committee update; prostate cancer awareness week activities; annual report; managed care; resource booklet; information packet/ new logo; public comments; agenda for the next committee meeting and an evaluation of this meeting.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Anne E. Williamson, 1100 West 49th Street, Austin, Texas 78756, (512) 458–2260.
Filed: December 8, 1997, 3:53 p.m.

TRD-9716497

♦ ♦ ♦

Tuesday, December 16, 1997, 8:00 a.m.

Exchange Building, Suite S-402, Texas Department of Health, 8407 Wall Street

Austin

Council of Sex Offender Treatment Rules Committee

AGENDA:

The Committee will discuss and possibly act on: recommendations for changes to rules (40 Texas Administrative Code, Chapters 510–513); other business not requiring action; and public comments.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Grace L. Davis, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4530.
Filed: December 8, 1997, 3:52 p.m.

TRD-9716494

♦ ♦ ♦

Friday, December 19, 1997, 9:30 a.m.

Exchange Building, Suite S-402, Texas Department of Health, 8407 Wall Street

Austin

Council on Sex Offender Treatment Clinical Issues Committee

AGENDA:

The Committee will discuss and possibly act on: adoption of minutes of the last meeting; recommendation for surgical castration; civil commitment/sexual predators; registration/notification; and juvenile sex offender legislation); other business not requiring action; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Grace L. Davis, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4530.
Filed: December 8, 1997, 3:52 p.m.

TRD-9716495

♦ ♦ ♦

Friday, December 19, 1997, 11:00 a.m.

Exchange Building, Suite S-402, Texas Department of Health, 8407 Wall Street

Austin

Joint Meeting of the Council on Sex Offender Treatment and the Interagency Advisory Committee

AGENDA:

The council will discuss and possibly act on: adoption of the minutes of the last meeting; executive director's report; Texas Department of Heath's Professional Licensing and Certification Division report; Clinical Issues Committee report (recommendation of position statements for surgical castration; civil commitment/ sexual predators; registration/notification; and juvenile sex offender legislation); Rules Committee report (recommended rule changes (40 Texas Administrative Code, Chapters 510–313); other business not requiring action; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Grace L. Davis, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4530.
Filed: December 8, 1997, 3:53 p.m.

TRD-9716496

♦ ♦ ♦

Texas Health Insurance Risk Pool ("Health Pool")

Monday, December 15, 1997, 11:00 a.m.

William P. Hobby Building, 333 Guadalupe, Lobby, Room 102

Austin

Board

AGENDA:

Some members will participate via teleconference because it is difficult or impossible for such members to attend the meeting.

Discussion and possible approval of policy language. Discussion and possible approval of brochure and other publications. Discussion and possible action on approval of application. Discussion and possible action on TPA contract and fees. Discussion and possible action on assessment rule and issues. Discussion and possible action on grievance procedures. Discussion and possible action on selection of agent/company to provide Public Official's liability insurance coverage for the Pool, its directors, officers and employees. Discussion and possible action on banking matters and line of credit. Discussion and possible action on TDI rule regarding financial reporting of the Pool. Discussion and possible action on other administrative matters. Setting of next meeting.

Contact: Rhonda Myron, or Kim Stokes, 333 Guadalupe Street, Austin, Texas 78711, (512) 463–6651.
Filed: December 5, 1997, 4:26 p.m.

TRD-9716394

♦ ♦ ♦

Texas Higher Education Coordinating Board

Monday, December 15, 1997, 9:00 a.m.

Chevy Chase Office Complex, Building One, Room 1.100B

7700 Chevy Chase Drive

Austin

Advisory Committee on Core Curriculum

AGENDA:

Review revisions and suggestions for adapting the essential elements of the curriculum as found in the 1989 Subcommittee Report on Core Curriculum; Receive input from institutional representatives; Subcommittee meetings; and Receive Subcommittee progress updates.

Contact: Catherine Parsoneault, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483–6214.
Filed: December 4, 1997, 3:22 p.m.

TRD-9716409

♦ ♦ ♦

Monday, December 15, 1997, 9:45 a.m.

Southwest Texas State University, Board of Regents Room, 11th Floor

J.C. Kellum Building, 601 University Drive

San Marcos

Campus Planning Committee

AGENDA:

The Committee will review the following projects: Southwest Texas State University-Art, Technology, and Physics Complex; Angelo State University- Student Center renovation and expansion; Sam Houston State University- Reapprove Administration Building renovation; Texas A&M University- Reapprove Kyle Field renovation and expansion and Purchase a 14,503 square feet building at 1501 South Texas Avenue; Tarleton State University- Science Building and Final approval to purchase parcels at 1530 West Jones and 1545 West Vanderbilt; Texas Agriculture Extension Service- Natural Resources Informatics Laboratory in Temple and Purchase a 2.09 acre parcel of land at 808 Blackland Road in Temple; Texas A&M University-Kingsville- Campus HVAC System improvements; Prairie View A&M University- Student Recreation Park; Texas Tech University- English, Philosophy, and Education Complex; Stangel/ Murdough Dining Hall renovation; and Texas Tech University Boulevard renovation; Texas Tech University Health Sciences Center- Renovate facility for Communication Disorders Department; Purchase property at 6610 Quaker Avenue including a 77,673 square foot hospital, a 39,846 square foot office building, and a 7,192 square foot

office building; Managed Health Care Offices renovation; and Administrative Offices renovation.

Contact: Roger Elliott, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483–6130.
Filed: December 4, 1997, 3:22 p.m.

TRD-9716268

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Tuesday, December 16, 1997, 9:30 a.m.

Cityplace, 2711 North Haskell

Dallas

Low Income Housing Tax Credit Committee

AGENDA:

The Low Income Housing Tax Credit Committee of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Additions or Revisions to the 1997 Tax Credit Waiting List; and to hear public testimony on Proposed 1998 Qualified Allocation Plan for the Low Income Housing Tax Credit Program; Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475–3100, or Relay Texas at 1–800–735–2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Austin, Texas 78701, (512) 475–3934.
Filed: December 9, 1997, 3:32 p.m.

TRD-9716555

♦ ♦ ♦

Texas Department of Insurance

Wednesday, December 17, 1997, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

AGENDA:

The Commissioner of Insurance will hold a public hearing under Docket Number 2331 to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of a reinsurance program to operate in concert with the catastrophe reserve trust fund established under Article 21.49 §8(i), Insurance Code. The Texas legislature in House Bill 1853 amended Article 212.49, §8(h)(13) to provide that with the approval of the Texas Department of Insurance, TWIA may establish a reinsurance program that operates in addition to or in concert with, the catastrophe reserve trust fund. This hearing is held pursuant to Article 21.49, §5A of the Insurance Code which provides that after notice and hearing, the Commissioner may issue any orders necessary to carry out the purposes of Article 21.49 and provides that before an order is adopted by the Commissioner, the Department shall post notice of the hearing on the order at the Secretary of State's Office in the State Capitol and shall hold a hearing to consider the proposed order. Any person may appear to testify for or against the adoption of the order. Copies of the TWIA petition and proposed reinsurance agreement are available fore review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 7871407–9104. To request copies of the petition and the proposed reinsurance agreement, please contact Angie Arizpe at (512) 322–4147 (refer to Reference number P-1297–40.)

Contact: Marilyn Hamilton, 333 Guadalupe Street, Austin, Texas 78714–9104.
Filed: December 5, 1997, 9:53 a.m.

TRD-9716310

♦ ♦ ♦

Texas Department of Licensing and Regulation

Wednesday, December 17, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room 420

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: Fletcher's Restaurant and Grill; Good News Pentecostal; USA Cleaners; VIT Cleaners; Valenciano Brothers Cleaners; Victoria Bank and Trust Company; Villa Provincial Apartments; Villa Royal Apartments; Ken Wasek; The Wash Pot; and Weber's Cleaners for failing to pay inspection/certification fees to obtain certificates of operations for the Respondent's boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) Chapter 755 and 16 Texas Administrative Code (TAC) Chapter 65, pursuant to the Code and Texas Revised Civil Statutes Annotated Article 9100, Texas Government Code Chapter 2001 (APA); and 16 TAC Chapter 65.

Contact: Allyson Lednicky, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: December 8, 1997, 2:01 p.m.

TRD-9716479

♦ ♦ ♦

Wednesday, December 17, 1997, 1:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room 420

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: Paradise Center; Ponderosa Apartments; Powell Cleaners; Primera Baptist Church; Joel A. Sellars; Westbury Hospital; Westgate Apartments; Westway Apartments; Whitaker Cleaners; Woodridge Baptist Church; Woodtrail Apartments; Wright Brothers Cleaners; Yaring's (Austin, Texas); YMCA (Beaumont, Texas; YMCA (Houston, Texas; and Your Valet Cleaners for failing to pay boiler inspection/certification fee(s) to obtained certificates of operation for the above named boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) Chapter 755 and 16 Texas Administrative Code (TAC) Chapter 65, pursuant to the Code and Texas Revised Civil Statutes Annotated Article 9100, Texas Government Code Chapter 2001 (APA); and 16 TAC Chapter 65.

Contact: Allyson Lednicky, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: December 8, 1997, 2:01 p.m.

TRD-9716480

♦ ♦ ♦

Friday, December 19, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor Room 108

Austin

Consumer Protection Section, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties against and revocation of license of license of the Respondent, George W. Burchfield, Jr., for failing to pay amount due the seller within 15 banking days in violation of Texas Revised Civil Statutes Annotated Article 8700 (the Act) ; §7(a)(4) and 16 Texas Administrative Code (TAC) §67.10 (4) and failing to pay public monies, including state sales tax, in violation of 16 TAC §67.103(3). The Department will also consider the complainant's claim against the Auctioneer Education and Recovery Fund in accordance with the Act §5C, pursuant to the Act and Texas Revised Civil Statutes Annotated Article 9100, Texas Government Code Chapter 2001 (APA); and 16 TAC Chapter 67.

Contact: Allyson Lednicky, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: December 8, 1997, 2:01 p.m.

TRD-9716481

♦ ♦ ♦

Monday, December 15, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

AGENDA:

The complete agenda is filed with the Office of the Secretary of State. The Commission will hold a regular meeting according to the following outline: A. Call to Order; B. Roll Call and Certification of Quorum; C. Contested Cases; D. Agreed Orders; E. Discussion and possible action to appointments to the Architectural Barriers Advisory Council and the Property Tax Consultants Advisory Council; F. Discussion of Proposed Fees and Fee Changes; G. Operating Budget; H. Staff Reports; I. Discussion and possible action on revising the agency's Administrative Operating Procedures manual, §4.16 (Pre-employment process); J. Public Comment; K. Executive Session; L. Open Session/Public Comment; M. Discussion of date, time and location of next Commission meeting. N. Adjournment.

Contact: Phyllis Wilson, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3173.
Filed: December 5, 1997, 4:39 p.m.

TRD-9716397

♦ ♦ ♦

Monday, December 15, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

REVISED AGENDA:

Add under Section F, a number 3. Water Well Drillers; variance fee.

Contact: Phyllis Wilson, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3173.
Filed: December 9, 1997, 12:00 p.m.

TRD-9716531

♦ ♦ ♦

Texas Lottery Commission

Tuesday, December 16, 1997, 9:00 a.m.

611 East Sixth Street, Grant Building, Commission Auditorium

Austin

AGENDA:

According to the agenda summary, the Texas Lottery Commission will call the meeting to order; consideration and possible action, including proposal of the repeal of the following bingo rules, which expired by operation of law on April 1, 1995: 16 TAC §§402.544, 402.550, 402.552, 402.553, 402.557, 402.560, 402.561, 402.562, 402.564, and/or 402.566; report, possible discussion and/or action on an analysis of lottery sales for FY 1998 and AF 1999 and Marketing and Advertising efforts; consideration of and possible action, including proposal, on a new rule for a new on-line lottery game; status report and possible action on the lottery Operations and Services Request for Proposals; consideration and possible action on issues relating to the lottery operator contract, including operations issues; consideration and possible action on the lottery advertising contract, such action may include whether to extend the contract or to issue a request for Proposals for advertising services, status report, possible discussion, and possible action, including implementation and communication, on legislation, consideration and possible action on a petition to accelerate the prize winnings of a deceased prizewinners; Commission may meet in Executive Session; return to open session for further deliberation and possible action on any matter discussed in Executive Session; consideration and possible action regarding lottery procurements and use of subcontractors; status report, possible discussion, and possible action on a state audit report relating to the Texas Lottery Commission; status report, possible discussion, and possible action on the audit of the lottery operator; status report, possible discussion and action on Texas Lottery Prize Vehicle Package Request for Proposals and associated instant lottery ticket; report and possible action concerning audit of systems; consideration of the status of possible entry of an order in any contested case if a proposal for decision has been received from the assigned administrative law judge and the time period has lapsed for the filing of exceptions and replies; report by the Acting Executive Director and possible discussion and/or action on the agency's financial status, budget and budget goals for FY 1998 and FY 1999, personnel practices and issues, HUB performance, FTE status, and retailer forums; possible discussion and/or action on licensing and audit status of the Charitable Bingo Operations Division and possible issues relating to the Bingo Advisory Committee; consideration and possible action on the Lottery's FY 1998–1999 advertising program; and adjournment.

For ADA assistance, call Michelle Bernal-Guerrero at (512) 344–5113 at least two days prior to the meeting.

Contact: Michelle Bernal-Guerrero, P.O. Box 16630, Austin, Texas 78761–6630, (512) 344–5113.
Filed: December 8, 1997, 3:06 p.m.

TRD-9716488

♦ ♦ ♦

Texas Mental Health and Mental Retardation Board

Wednesday, December 17, 1997, 9:30 a.m.

909 West 45th Street, (Auditorium)

Austin

Audit and Financial Oversight Committee

AGENDA:

1. Citizens Comments

2. Audit Activity Update

3. Report on the Investment Process for Client Trust Funds

4. Update on the Progress of State-operated Community Services Compliance with Department Procedures

5. Performance Contract Incentive/Recoupment Procedure

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506 (voice of Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: December 9, 1997, 1:15 a.m.

TRD-9716536

♦ ♦ ♦

Wednesday, December 17, 1997, 10:30 a.m.

909 West 45th Street, (Auditorium)

Austin

Business and Asset Management Committee

AGENDA:

1. Citizens Comments

2. Status of Major Construction Projects

3. Status of Computer Aided Facilities Management

4. Update on Real Property Transactions Previously Approved by the Board: Lease of Bond-Funded Community Facilities; Lease at Kerrville State Hospital to the YMCA of San Antonio; Sale of Real Property at the Big Spring State Hospital for the Purpose of Constructing a Veterans' Home; Implementation of the Asset Management Policy

5. Update on Workers Compensation and Risk Management

6. Consideration of Approval of FY 1998 Operating Budget Adjustments

7. Consideration of Acceptance of Donations in Excess of $500 from: Abbott Laboratories; $2,000; Janssen Pharmaceutica — $2,000; Novartis Pharmaceuticals — $1,000; Abilene State School Volunteer Services Council: One Step Air Mattress ($3,000); Tickets to Shriners' Circus ($800); and Tickets to Paramount theater ($600); Austin State School Volunteer Services Council- $19, 542; Holiday Donations

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506 (voice of Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: December 9, 1997, 1:15 p.m.

TRD-9716535

♦ ♦ ♦

Wednesday, December 17, 1997, 1:30 p.m.

909 West 45th Street, (Auditorium)

Austin

Medicaid Committee

AGENDA:

1. Citizens Comments *

2. Update on Implementation of the New Rate Setting Methodology

3.-8. Review and Approval of Medicaid Reimbursement for: State-operated Campus-based Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective September 1, 1997, through December 31, 1997; State-operated Small Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective September 1, 1997 through December 31, 1997; Lone Shadow, a State-operated Small Intermediate Care Facility for the Mentally Retarded (ICF/MR) Effective September 25, 1997 through December 31, 1997; Rehabilitative Services for Persons with Mental Illness Effective December 1, 1997 through November 30, 1998; Case Management for Persons with Chronic Mental Illness and for Case Management for Individuals who have Mental Retardation or have a Related Condition for the Period December 1, 19997, through November 30, 1998; Diagnostic Services for Persons With a Potential for Mental Retardation Effective December 1, 1997, through November 30, 1998

9. Consideration of Approval of the Adoption of the Repeal of Chapter 409, Subchapter H, concerning Diagnostic Services for Person with Potential for Mental Retardation.

* Additional Items to be Considered per Agenda filed with the Office of the Secretary of State.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506 (voice of Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: December 9, 1997, 1:15 p.m.

TRD-9716538

♦ ♦ ♦

Wednesday, December 17, 1997, 2:30 p.m.

909 West 45th Street, (Auditorium)

Austin

Planning and Policy Development Committee

AGENDA:

1. Citizens Comments

2. Legislative Update

3. Update on the Activities of the House Bill 1734 Committee

4. Consideration of Approval of the Proposed Modification of the Helen Farabee Center's Community MHMR Center Plan

5. Consideration of Approval of Adoption of Repeal of §§408.101–408.106 of Chapter 408, Subchapter D, Concerning Additional Mandatory Standards for Selected Mental Retardation Community-based Providers

6. Consideration of Approval of Adoption of New Chapter 411, Subchapter H, Governing Interstate Transfer, with the Contemporaneous Repeal of Chapter 4033, Subchapter H, Governing Interstate Transfer

7. Consideration of Approval of a Change to the Organizational Chart for Central Office

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506 (voice of Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: December 9, 1997, 1:16 p.m.

TRD-9716537

♦ ♦ ♦

Wednesday, December 18, 1997, 9:30 a.m.

909 West 45th Street, (Auditorium)

Austin

AGENDA:

I. Call to Order: Roll Call

II. Citizen's Comments

III. Approval of the Minutes of the November 5, 1997, Meeting

IV. Issues to be Considered:

1. Chairman's Report

2. Commissioner's Report

Medical Director's Report

Presentation on the Human Resources Fact Book

Status Report on the Mental Retardation Local Authorities

Additional Items to be considered per agenda.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506 (voice of Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: December 9, 1997, 1:16 p.m.

TRD-9716539

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Tuesday, December 16, 1997, 10:00 a.m.

401 Jackson-Fort Bend County Courthouse (Old Courthouse)

Richmond

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by PCS PHOSPHATE COMPANY, INC., for a revised draft permit on a renewal and amendment to Permit Number 00004 to authorize a discharge of stormwater runoff at a volume not to exceed 16,000,000 gallons per day at a frequency of not more than three times per week. The permit currently authorized to discharge stormwater at a combined volume not to exceed an average flow of 50,000,000 gallons per day via Outfalls 001, 002, and 003. The applicant disposes of stormwater runoff from a closed Frasch process sulphur mine. The plant site is located on the south side of Farm-to-Market Road 1994 approximately three miles south of the intersection of Farm-to Market roads 1994 and 762 in Fort Bend County, Texas. The stormwater runoff is discharged to drainage ditches; thence to Big Creek; thence to the Brazos River in Segment Number 1202 of the Brazos River Basin. The unclassified receiving waters of the ditches have no significant aquatic life uses. The designated uses for Segment Number 1202 are high quality aquatic life use, contact recreation, and public water supply. SOAH Docket Number 582–97–1446.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025
Filed: December 8, 1997, 10:22 a.m.

TRD-9716436

♦ ♦ ♦

Wednesday, December 17, 1997, 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the agenda: Hearing Request; Temporary Variance; District Matter; Petroleum Storage Tank Enforcement Agreed Orders; Petroleum Storage Tank Enforcement Default Orders: Air Enforcement Agreed Orders; Agricultural Advisory Appointment; Municipal Waste Discharge Enforcement Agreed Orders; Multi-Media Enforcement Agreed Orders; Industrial Hazardous Waste Enforcement Agreed Orders; Agricultural Enforcement Default Order; Industrial Waste Discharge Enforcement Agreed Order; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 Agenda starts 8:45 until 9:25). (Registration for the 1:00 p.m. Agenda Starts 12:30 until 1:00 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: December 5, 1997, 1:47 p.m.

TRD-9716337

♦ ♦ ♦

Wednesday, December 17, 1997, 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

REVISED AGENDA

The Commission will consider approving the following matter on the 1:00 p.m. agenda: Motion for Reconsideration.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: December 8, 1997, 3:50 .m.

TRD-9716493

♦ ♦ ♦

Tuesday, January 6, 1998, 10:00 a.m.

TNRCC, 7500 Viscount, Suite 147

El Paso

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by TERRY BOURBON doing/business/as GREEN ACRES MOBILE HOME PARK AND RIVERVIEW ESTATES WATER SYSTEM for an increase in water rates effective October 1, 1997, for its service area located in El Paso County, Texas SOAH Docket Number 582–97–2169.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 10, 1997, 8:10 a.m.

TRD-9716576

♦ ♦ ♦

Tuesday, January 6, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on a petition by JERRY HOUSE doing/business/as HOUSE-CORRAL STREET WATER SYSTEM, to the Texas Natural Resource Conservation Commission to cease operations, discontinue providing water utility service and cancel water Certificate of Convenience and Necessity Number 10342 in Harris County, Texas. The proposed effective date of the action is June 20, 1997. The water utility service is located approximately 28 miles northwest of Houston, Texas and is generally bounded by Tombal, six miles northeast and Cypress, four miles South and as specified in detailed maps filed with the Texas Natural Resource Conservation Commission and available for review at the utility's office at 15417 House Road, Hockley, Texas 77447. SOAH Docket Number 582–97–2170.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 10, 1997, 10:03 a.m.

TRD-9716583

♦ ♦ ♦

Monday, January 12, 1997, 9:00 a.m.

609 East Main Street- Georgetown City Hall Council Chambers

Georgetown

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by LAND/HOME DEVELOPMENT SPECIALISTS, INC. for a Proposed Permit Number 13880–001 to authorize the disposal of treated domestic wastewater effluent via drip irrigation on 4.7 acres of non-public access agricultural land. The disposal volume is not to exceed an average of 20,460 gallons per day. Application rates are not to exceed 0.10 gallons/square foot/day. The wastewater treatment facilities and disposal site are located approximately 0.25 miles north of the intersection of U.S. Highway 183 and State Highway 29 in Williamson County, Texas. This location is in the drainage area of the South Fork San Gabriel River in Segment Number 1250 of the Brazos River Basin. No discharge of pollutants into the waters of the State is authorized by this permit. SOAH Docket Number 582–97–2129.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 8, 1997, 10:22 a.m.

TRD-9716437

♦ ♦ ♦

Tuesday, January 13, 1998, 7:00 p.m.

Ennis Public Library, 501 West Ennis Avenue

Ennis

AGENDA:

For an informal public meeting concerning an application filed with the Texas Natural Resource Conservation Commission by ECD LANDFILL for an amendment to their existing municipal solid waste permit to construct and operate a Type I municipal solid waste facility. The amendment has been designated MSW1745–B, and, if approved, will authorize lateral and vertical expansion to the landfill. The proposed site will cover about 352.6 acres of land and will receive a maximum of approximately 3,704 tons of municipal solid waste per day. The facility is located approximately 4 miles north of the City of Ennis, 0.75 miles north of the City of Garrett, and 1.8 miles south of the City of Palmer, along IH45, 1.0 mile north of FM 879 in Ellis County, Texas.

A notice dated September 24, 1997 for this application appeared in the Ennis Daily News. This notice erroneously stated the permit application as MSW1745–A. The correct permit application number is MSEW1745–B.

Contact: Annie Tyrone, Mail Code 108, P.O. Box 13087, Austin, Texas 78711–3087, 1–800–687–4040.
Filed: December 10, 1997, 8:10 a.m.

TRD-9716575

♦ ♦ ♦

Texas Board of Occupational Therapy Examiners

Friday, December 12, 1997, 9:30 a.m.

333 Guadalupe, Suite 2–510

Austin

Board

AGENDA:

I. Call to Order

II. Election of Board Officers

III. Appointment of members and alternates to Application Review, Continuing Education, Investigation, and Rules Committees

IV. Appointment of representatives and alternatives to the Executive Council of Physical Therapy and Occupational Therapy Examiners

V. Approval of Minutes of September 19, 1997 Board Meeting

VI. Public Comment

VII. Report from Texas Occupational Therapy Association (TOTA)

VIII. Review and possible action on Agreed Orders #97–18; and Discussion of Investigative Activities

IX Discussion and possible action on proposed rule changes, as follows:

§362.1, concerning Definitions

§372.1, concerning Provision of Services

§373.1, concerning Supervision

X. Discussion and possible action on Executive Director's Report

XI. Discussion and possible action on Coordinator's Report

XII. Executive Session to meet with Assistant Attorney(s) General to obtain legal advice concerning pending or contemplated litigation, and/or obtain legal advice concerning a possible conflict between state and federal law pursuant to §551.071 of the Government Code.

XIII. Return to open session for discussion and possible action involving the legal advice.

XIV. Discussion and possible action on the next meeting dates and location.

XV. Adjournment.

Contact: Alicia Dimmick Essary, 333 Guadalupe Street, Suite 20510, Austin, Texas 78701–3942, (512) 305–6900.
Filed: December 4, 1997, 9:08 a.m.

TRD-9716231

♦ ♦ ♦

Texas Board of Orthotics and Prosthetics

Tuesday, December 16, 1997, 10:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Board Workshop/Training

AGENDA:

The board will introduce members, guests, and staff and will discuss and possibly act on: review of Senate Bill 291 from the 1997 regular session of the 75th Texas Legislature; oath of office procedures; Open Meetings Act; release of public information; ethics of board members and staff; administrative law; and other matters relating to the board's operation); relationship between the Texas Board of Orthotics and Prosthetics and the Texas Department of Health; disciplinary actions and administrative hearings; travel reimbursement procedures; and other matters not requiring board action.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Donna Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6601.
Filed: December 5, 1997, 8:04 a.m.

TRD-9716303

♦ ♦ ♦

Tuesday, December 16, 1997, 1:30 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Board Meeting

AGENDA:

The board will introduce members, guests, and staff and will discuss and possibly act on: executive director's report; election of board officers; appointment of committees (Rules Committee; Complaint Committee; Credentials Committee; and other committees as needed); public comment; other matters not requiring board action; and setting the date of the next board meeting.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Donna Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6601.
Filed: December 5, 1997, 8:04 a.m.

TRD-9716302

♦ ♦ ♦

Texas Department of Protective and Regulatory Services

Friday, December 19, 1997, 10:00 a.m.

Texas Department of Health, Moreton Building, M618, 1100 49th Street

Austin

Child Fatality Review State Committee

AGENDA:

Welcome and Introductions. Reports: Coordinator Report; Developing Teams Committee. Old Business: Investigation Protocol Manual; 1998 Network Meeting. Lunch. Old Business Continued: Newsletter Update; State Committee Appointments; Web Site. New Business. Adjourn.

Contact: Janece Keetch, P.O. Box 149030, Austin, Texas 78714–9030. (512) 438–4963.
Filed: December 8, 1997, 3:07 p.m.

TRD-9716489

♦ ♦ ♦

Texas Department of Public Safety

Monday, December 15, 1997, 3:00 p.m.

DPS Headquarters, 5805 North Lamar Boulevard

Austin

Public Safety Commission

AGENDA:

Approval of Minutes

Budget Matters

Personnel Matters

Pending and Contemplated Litigation

Real Estate Matters

Miscellaneous and Other Unfinished Business

Public Comment

Internal Audit Report

Notice of Assistance: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Dorothy Wright at (512) 453–3929, two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Dudley Thomas, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 424–2000, Extension 3700.
Filed: December 3, 1997, 3:38 p.m.

TRD-9716221

♦ ♦ ♦

Thursday, January 8, 1998, 3:00 p.m.

5805 North Lamar Boulevard

Austin

Governor's Division of Emergency Management, Drought Response and Monitoring Committee

AGENDA:

Welcome and Introductions

Technical Assistance and Planning Subcommittee Report

Drought and Water Supply Monitoring Subcommittee Report

Action Items: Review of last meeting minutes and On-Going strategies

Other Issues and Concerns

Adjournment

Notice of Assistance: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Dorothy Wright at (512) 453–3929, two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Juan Perales, 5805 North Lamar Boulevard, Austin, Texas 78773–0220, (512) 424–2452.
Filed: December 9, 1997, 3:40 p.m.

TRD-9716564

♦ ♦ ♦

Texas Public Finance Authority

Wednesday, December 17, 1997, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee Room Five

Austin

Board Meeting

AGENDA:

1. Call to order.

2. Approval of minutes of November 12, 1997 Board meeting.

3. Report on issuance of GO Refunding Bonds and final designations on 1997A and 1997B Revenue Bonds.

4. Consider a request for financing from the Texas Parks and Wildlife Department for $12,000,000 of revenue bond proceeds for capital improvement projects at various state parks and select a method of sale.

5. Consider adoption of underwriting policies.

6. Select pool of underwriters for the Authority's negotiated bond issues through August 31, 1999 and select from the pool the underwriting syndicate for the revenue bond issue to finance Phase 2 of the Texas Department of Health laboratory.

7. Consider a request for financing from the Texas Youth Commission for $15,800,000 of general obligation proceeds to finance various construction projects and select a method of sale.

8. Consider a request for financing from the Texas Department of Mental Health and Mental Retardation for $26,020,000 of general obligation proceeds to finance various construction projects and select a method of sale.

9. Other Business

10. Adjourn.

Persons with disabilities who plan to attend this meeting and who have special communication or other needs, should contact Jeanine Barron or Marce Watkins at (512) 463–5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463–5544.
Filed: December 9, 1997, 12:00 p.m.

TRD-9716530

♦ ♦ ♦

Public Utility Commission of Texas

Wednesday, December 17, 1997, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project Number 14929, Universal Service Fund; Project Number 18426, Tel-Assistance and Lifeline Service and Statewide Dual Party Relay Service; Project Number 17510, Specialized Equipment Distribution Program (USF); Project Number 17714, Telecommunications Relay Service (USF); Docket Numbers 18100, 15042, 17972, 18004, 18097, 18098, 17497, 18011, 18102, 18022, 18023, 18053, 18079, 18080, 18087, 18093, 16189, 16196, 16226, 16285, 16290,16455,17065,17579, 17587, and 17781; Project Number 18438, Number Conservation Measures; Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Question regarding combination of state and federal discounts for telecommunications services for qualifying schools and libraries; Project Number 18000, Informal Dispute Resolution; Docket Numbers 16874, 18088, 18249, 17751, 17687, and 18057; Consideration of Application of Houston Lighting and Power for a Change in Accounting Procedure and Approval of Certain Base Rate Credits; Docket number 17581 and 17707; Project Number 14789, Support for Legislative Committees;

Project Number 17949, 1999 Report on the Scope of Competition in the Electric Industry; Electric Industry restructuring, electric utility reliability and customer service; Customer service issues, including but not limited to correspondence and complaint issues; Project assignments, correspondence, staff reports, audit, agency structure and administrative procedures, budget, business plan, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936–7308.
Filed: December 9, 1997, 4:09 p.m.

TRD-9716568

♦ ♦ ♦

Railroad Commission of Texas

Friday, December 12, 1997, 9:00 a.m.

Holiday Inn Emerald Beach, 1102 South Shoreline Boulevard, Beachcomber Room

Corpus Christi

REVISED AGENDA:

The Commissioners will hear public comment regarding safety and service of rail providers in Texas.

9:00 a.m. — Call to order by Chairman Charles R. Matthews; opening remarks by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carole Keeton Rylander.

9:15 a.m. — Speakers' comments to the Commission.

11:45 a.m. — Closing remarks by Chairman Matthews, Commissioners Williamson and Rylander.

12:00 Noon. — Adjournment by Chairman Matthews (time is approximate and will depend upon number of speakers).

The Commission may discuss its' Action Plan for Rail Service and Safety in Texas, its' Plan to alleviate the Rail Service Crisis in Texas, the proceedings at the Surface Transportation Board, other matters relating to the Union Pacific/Southern Pacific merger, and may take further actions thereon as may be appropriate.

Contact: Jerry Martin, P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7001.
Filed: December 4, 19997, 2:51 p.m.

TRD-9716264

♦ ♦ ♦

Friday, December 12, 1997, 2:00 p.m.

Harlingen Municipal Auditorium, 1204 Fair Park Boulevard

Harlingen

REVISED AGENDA:

The Commissioners will hear public comment regarding safety and service of rail providers in Texas.

2:00 p.m. — Call to order by Chairman Charles R. Matthews; opening remarks by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carole Keeton Rylander.

2:15 p.m. — Speakers' comments to the Commission.

4:45 p.m. — Closing remarks by Chairman Matthews, Commissioners Williamson and Rylander.

5:00 p.m. — Adjournment by Chairman Matthews (time is approximate and will depend upon number of speakers).

The Commission may discuss its' Action Plan for Rail Service and Safety in Texas, its' Plan to alleviate the Rail Service Crisis in Texas, the proceedings at the Surface Transportation Board, other matters relating to the Union Pacific/Southern Pacific merger, and may take further actions thereon as may be appropriate.

Contact: Jerry Martin, P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7001.
Filed: December 4, 19997, 2:51 p.m.

TRD-9716263

♦ ♦ ♦

Tuesday, December 16, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1–111

Austin

AGENDA:

According to the agenda, the Railroad Commission of Texas will consider various applications within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: December 5, 19997, 4:21 p.m.

TRD-9716391

♦ ♦ ♦

Tuesday, December 16, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1–111

Austin

REVISED AGENDA:

The Railroad Commission of Texas will consider and may act on the following items: Consideration of proposed Interagency Contract with GLO concerning providing a half-time engineer/geologist to review and comment on coastal facility certification applications submitted to GLO under §40.109 Texas Natural Resources Code.

Contact: Lindil C. Fowler, P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: December 8, 19997, 2:00 p.m.

TRD-9716476

♦ ♦ ♦

Friday, December 19, 1997, 9:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room, 12–170

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to

consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–6729.
Filed: December 5, 1997, 4:22 p.m.

TRD-9716392

♦ ♦ ♦

Friday, December 19, 1997, 1:45 p.m.

1701 North Congress Avenue, 12th Floor Conference Room, 12–170

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–6729.
Filed: December 8, 1997, 2:00 p.m.

TRD-9716477

♦ ♦ ♦

State Office of Risk Management

Wednesday, December 17, 1997, 9:15 a.m.

7702 FM 1960 East, Suite 210G

Humble

Risk Management Board

AGENDA:

1. Call to order;

2. Approval of minutes for December 2, 1997 public meeting;

3. Executive Session: Pursuant to §551.074, Government Code, to consider personnel related matters involving public officers or employees, and pursuant to §551.071, Government Code, to discuss matters relating to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation including, but not limited to, discussion of applicants for Executive Director position;

4. Action on matters considered in executive session;

5. Confirmation of future public meeting dates;

6. Adjournment.

Contact: Albert Betts, Jr., P.O. Box 13777, Austin, Texas 78711, (512) 175–1440.
Filed: December 10, 1997, 10:05 a.m.

TRD-9716584

♦ ♦ ♦

Texas Senate

Thursday, January 8, 1998, 10:00 a.m.

411 Elm Street, Dallas County Commissioner's Court

Dallas

Senate Interim Committee on Sex Offenders

AGENDA:

I. Call to Order

II. Introductory Remarks by Senator Shapiro

III. Invited Testimony

Mr. and Mrs. Gene Schmidt

Judge Pat McDowell

Ms. Sara Sappington, Washington State Deputy Attorney General

Ms. Camille Cain, Office of the Governor

Mr. Paul Jordan, Texas Department of Public Safety

IV. Adjournment

Contact: Helen Gonzalez, P.O. Box 12068, Austin, Texas 78711, (512) 463–0108.
Filed: December 5, 1997, 9:36 a.m.

TRD-9716308

♦ ♦ ♦

Special Board of Review

Wednesday, December 17, 1997, 1:00 p.m.*EDITOR'S NOTE: This meeting was inadvertently published in the "Regional Meetings" Section of the December 5, 1997 Issue of the Texas Register.*

Williamson County Courthouse, 710 Main Street, County Commissioner's Courtroom

Georgetown

Special Board of Review

AGENDA:

I. Call to Order

II. Chairman's Remarks

III. Discussion of, and Action on "Leander Development Plan" (also known as the "Hog Farm" plan; City of Austin Zoning Case Number C814–97–0001), Including zoning and Subdivision Issues.

IV. Adjournment

Contact: Bob Hewgley, 1700 North Congress Avenue, Room 720, Austin, Texas 78701, (512) 463–5013.
Filed: November 26, 1997, 9:52 a.m.

TRD-9715976

♦ ♦ ♦

Stephen F. Austin State University

Friday, December 12, 1997, 1:00 p.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents Building and Grounds Committee

REVISED AGENDA:

I. University Housing Study

II. Austin Building Second Floor

III. Alumni Office Expansion

IV. Science Building

Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects.

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962–6078, (409) 468–2201.
Filed: December 9, 1997, 9:15 a.m.

TRD-9716521

♦ ♦ ♦

Friday, December 12, 1997, 1:00 p.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents Building and Grounds Committee

SECOND REVISION AGENDA:

V. Executive Session — Real Estate

Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects.

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962–6078, (409) 468–2201.
Filed: December 9, 1997, 10:32 a.m.

TRD-9716523

♦ ♦ ♦

Texas Southern University

Thursday, December 18, 1997, 1:30 p.m.

3100 Cleburne/School of Technology-Auditorium, Room 111

Houston

Finance and Building and Grounds Committee

AGENDA:

Meeting to Consider: The Finance Committee will hold an open meeting with the Management Team from the State Comptroller's Office.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 3, 1997, 2:15 p.m.

TRD-9716202

♦ ♦ ♦

Thursday, January 8, 1998, 10:00 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Academic Affairs Committee

AGENDA:

Meeting to Consider: Progress reports of academic activities and programs. Executive Session.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 9, 1997, 3:04 p.m.

TRD-9716547

♦ ♦ ♦

Thursday, January 8, 1998, 11:15 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Finance and Building and Grounds Committee

AGENDA:

Meeting to Consider: Matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, contract awards; and informational items, Executive Session.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 9, 1997, 3:04 p.m.

TRD-9716548

♦ ♦ ♦

Thursday, January 8, 1998, 12:30 p.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Development Committee

AGENDA:

Meeting to Consider: Reports from the Administration on University Fund-Raising efforts.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 9, 1997, 3:05 p.m.

TRD-9716549

♦ ♦ ♦

Thursday, January 8, 1998, 1:15 p.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Student Services Committee

AGENDA:

Meeting to Consider: Progress reports to receive informational items. Executive Session.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 9, 1997, 3:05 p.m.

TRD-9716550

♦ ♦ ♦

Thursday, January 8, 1998, 11:15 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Personnel Committee

AGENDA:

Meeting to Consider: Ratification of appointments of instructional personnel, academic personnel changes.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 9, 1997, 3:05 p.m.

TRD-9716551

♦ ♦ ♦

Friday, January 9, 1998, 8:30 a.m.

3100 Cleburne, Robert J. Terry Library, Fifth Floor

Houston

Board of Regents

AGENDA:

Meeting to Consider: Ratification of appointments of instructional personnel, academic personnel changes. Executive Session.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: December 9, 1998, 3:04 p.m.

TRD-9716546

♦ ♦ ♦

Texas State Technical College System

Friday, December 12, 1997, 10:00 a.m.

3801 Campus Drive, Building 32–01

Waco

Telephone Conference Board of Regents Meeting

AGENDA:

The Board will meet by teleconference for the purpose of possible appointment of texas State Technical College System Chancellor.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: December 8, 1997, 4:22 p.m.

TRD-9716506

♦ ♦ ♦

Friday, December 12, 1997, 10:02 a.m.

3891 Campus Drive, Building 32–01

Waco

Telephone Conference Board of Regents Closed Session

AGENDA:

The Board of Regents will go into closed session in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in §§551.074 and 551.075 to discuss the candidates for Chancellor of Texas State Technical College System and the appointment of Chancellor.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: December 8, 1997, 4:22 p.m.

TRD-9716507

♦ ♦ ♦

Texas Tech University

Thursday, December 11, 1997, 2:00 p.m.

Administration Building, Akron and Broadway Avenues, Texas Tech University

Lubbock

Board of Regents

AGENDA:

2:00 p.m. — Call to Order; Invocation; Executive Session to confer with its employees pursuant to §551.075, Texas Government Code. At approximately 2:30 p.m., or immediately following Executive Session, Convene into Open Session of the meeting of the Board of Regents for consideration of action on the the recommendations of the Board of Regents Ad Hoc Committee on Admission Standards (and related policies) on which final action has not already been taken.

Note: Immediate action by special called meeting is required to consider revised admission standards to Texas Tech University. It has proven extremently difficult to assure the presence of a quorum of the Board members at one location. Therefore, while a quorum or more of members may be able to attend tha meeting in person, in order to properly exercise its duty of governance of the University, the Board will meet by telephone conference call at the designated time and place.

Contact: James L. Crowson, Box 42013, Lubbock, Texas 79409–2013, (806) 742–0012.
Filed: December 5, 1997, 9:19 a.m.

TRD-9716307

♦ ♦ ♦

Texas Department of Transportation

Monday, December 15, 1997, 8:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Executive Session under §551.074, Government Code, to interview and discuss the appointment of executive director of the Texas Department of Transportation.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: December 5, 1997, 8:25 a.m.

TRD-9716305

♦ ♦ ♦

Thursday, December 18, 1997, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Public Hearing concerning Unified Transportation Program selection process. Approve minutes. Awards/Recognitions/Resolutions. Rule-making: 43 TAC, Chapters 1, 6, 9, 17, 18, 21, 23, 25 and 28. Transportation Planning. Contract Awards/Rejections/ Defaults/Assignments/Claims. Contested Cases. Routine Minute Orders. Executive Session for legal counsel consultation, land acquisition matters, and management personnel evaluations, designation, assignments and duties. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: December 10, 1997, 11:32 a.m.

TRD-9716596

♦ ♦ ♦

Tuesday, December 30, 1997, 8:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Executive Session under §551.074, Government Code, to interview and discuss the appointment of executive director of the Texas Department of Transportation.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: December 5, 1997, 10:17 a.m.

TRD-9716313

♦ ♦ ♦

Texas Underground Facility Notification Corporation

Wednesday, December 17, 1997, 2:00 p.m.

1400 North Congress Avenue, Capitol Extension Room E2.026

Austin

AGENDA:

I. Call to Order/Quorum Call.

II. Approve minutes from last meeting — December 1, 1997

III. Ratify Actions Concerning:

(A). Opening Corporation's Bank Account

(B). Obtaining Post Office Box for Corporation

IV. Possible Discussion and/or Action Regarding Articles of Incorporation filed with the Secretary of State.

V. Possible Discussion and/or Action regarding Board's Approval for acceptance of funds from the Texas Railroad Commission (RRC).

VI. Possible Discussion and/or Action regarding Committee Reports on Staffing Options; Corporation Budget; and Legal Representation.

VII. Possible Discussion and/or Action regarding authorization by the Board for the Corporation to enter into contractual arrangements with outside entities for staffing and administrative support functions, including the role and functions of an executive director and administrative support staff.

VIII. Possible Discussion and/or Action regarding Committee Report on Mailing Project to Class A Facility Operators; Preparation of Materials associated with the Mailing (inserts including invoice and public education brochure).

IX. Possible Discussion and/or Action regarding information presented to the Board by Representatives of One-Call Notification Centers.

X. Possible Discussion and/or Action regarding authorization to move forward with development of technical standards for notification centers; preparation of requests for bid on toll-free 800 phone number and call router equipment.

XI. Possible Discussion and/or Action regarding Authorization for Board to Accept Funds from Private Sector Entities.

XII. Possible Discussion and/or Action regarding the Board Obtaining " Agency Code" Designation from the Secretary of State.

XIII. Possible Discussion and/or Action regarding liability insurance for Board Members.

XIV. Set Next Meeting Date for the Board

XV. Adjourn.

Contact: Ashley Smith, TIRR Systems, 5100 Travis, Houston, Texas 77002, (713) 528–0123.
Filed: December 8, 1997, 4:46 p.m.

TRD-9716517

♦ ♦ ♦

University of Houston System

Monday, December 15, 1997, 8:00 a.m.

3100 Cullen Boulevard, UH Athletic/Alumni Facility, Melcher Board Room

Houston

Board of Regents Executive Committee

AGENDA:

Approval of Minutes, Bylaw Revisions, Architectural Schematic Design and Project Planning Guide for the Charter School of Technology, Award of Various Contracts, Appointment of Architects and Consultants, AD Art/E.S.C. Scoreboard Letter of Intent, Personnel Recommendations, and Executive Session/Report from Executive Session, ETC.

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas 77204 (713) 743–3444.
Filed: December 8, 1997, 9:43 a.m.

TRD-9716417

♦ ♦ ♦

University Interscholastic League

Monday, December 8, 1997, 9:00 a.m.

Club Hotel, IH35 at Martin Luther King Boulevard

Austin

Waiver Review Board

AGENDA:

AA. Request for a waiver of the Parent-Residence Rule by Derrick Parker representing Leander High School in Leander, Texas.

BB. Request for a waiver of the Four Year Rule by Jose Romero representing Lanier High School in San Antonio, Texas.

CC. Request for a waiver of the Parent-Residence Rule by Chad E. Blair representing Trinidad High School in Trinidad, Texas.

DD. Request for a waiver of the Parent-Residence Rule by Roland Reyes representing Tidehaven High School in El Maton, Texas.

EE. Request for a waiver of the Parent-Residence Rule by D'Andre Janelle Shamlin representing Skyline High School in Dallas, Texas.

FF. Request for a waiver of the Parent-Residence Rule by Ahmad Haywood representing West Oso High School in Corpus Christi, Texas.

GG. Request for a waiver of the Four Year Rule by Casey Burns representing Odessa High School in Odessa, Texas.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471–5883.
Filed: December 4, 1997, 11:43 a.m.

TRD-9716245

♦ ♦ ♦

Thursday, December 11, 1997, 9:00 a.m.

Omni Southpark Hotel, Ben White Boulevard at IH35 South

Austin

Hearing Officer

AGENDA:

AA. Alleged Violation of Athletic Code (two instances), Inappropriate Interaction with Game Officials, Student Representative, Houston Westbury High School.

BB. Alleged Violation of Athletic Code, Inappropriate Interaction with A Game Official, Fans, Rio Vista High School.

CC. Alleged Violation of Athletic Code, Inappropriate Interaction with A Game Official, Fans and Student Representatives, Georgetown High School.

DD. Appeal of District Executive Committee Decision Ruling a Student Athlete at Fort Worth Polytechnic High School Ineligible.

EE. Appeal of District Executive Committee Decision Ruling a Student Athlete at Houston Clear Lake High School Ineligible.

FF. Request for Appeal of District Executive Committee Decision Ruling a Student Athlete at San Antonio Churchill High School Ineligible.

Contact: C. Ray Daniel, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471–5883.
Filed: December 8, 1997, 2:01 p.m.

TRD-9716478

♦ ♦ ♦

University of Texas Health Science Center at San Antonio

Wednesday, December 17, 1997, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of Minutes

2. Protocol for Review

3. Subcommittee Reports

4. Other Business.

Monoclonal Antibodies

Wire-Bottomed Cages

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284, (210) 567–3717.
Filed: December 9, 1997, 11:59 a.m.

TRD-9716529

♦ ♦ ♦

The University of Texas at Austin

Tuesday, December 9, 1997, 11:00 a.m.

21st and San Jacinto Streets, Schmidt Room, Alumni Center

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order

II. Approval of Minutes of Previous Meeting

III. New Business

IV. Announcement/Information Reports.

V. Executive Session

Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees- §551.074 of the Texas Government Code.

VI. Adjournment

Contact: Jody Conradt, Bellmont Hall 718, Austin, Texas 78712–1286, (512) 499–4402.
Filed: December 4, 1997, 2:25 p.m.

TRD-9716259

♦ ♦ ♦

The University of Texas System

Wednesday, December 10, 1997, 9:00 a.m.

201 West Seventh Street, Ninth Floor, Ashbel Smith Hall, Regents' Conference Room

Austin

Executive Committee of the Board of Regents

AGENDA:

The Executive Committee of the Board of Regents of the University of Texas System will convene in Open Session via telephone conference call to consider the item set forth which needs to be resolved prior to the next regular meeting of the board on February 11–12, 1998:

U.T. System: Selection of a Consultant to Recommend to the Board of Regents the Location of the Lower Rio Grande Valley Regional Academic Health Center as Authorized by the 75th Texas Legislature and Related Actions.

It is not possible to convene a quorum of the Committee at one time and place to consider this item.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701–2981, (512) 499–4402.
Filed: December 5, 1997, 11:05 a.m.

TRD-9716317

♦ ♦ ♦

Texas Workers' Compensation Insurance Fund

Tuesday, December 16, 1997, 7:00 p.m.

The Four Seasons, 98 San Jacinto Street, Plaza Suite 716

Austin

Board of Directors

AGENDA:

Call to Order; Roll Call; Annual Review of the Organizational Effectiveness Committee's Job Description; Nomination of the Organizational Effectiveness Committee for 1998; Executive Session; Action Items Resulting from Executive Session Deliberations; Public Participation; Adjourn.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, (512) 404–7142.
Filed: December 8, 1997, 9:44 a.m.

TRD-9716419

♦ ♦ ♦

Tuesday, December 16, 1997, 8:00 p.m.

The Four Seasons, 98 San Jacinto Street, Plaza Suite 716

Austin

Board of Directors

AGENDA:

The Board of Directors of the Texas Workers' Compensation Insurance Fund ("Fund") will have an informal dinner at 8:00 p.m. on Tuesday, December 16, 1997. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund, and certain staff of the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, (512) 404–7142.
Filed: December 8, 1997, 9:44 a.m.

TRD-9716420

♦ ♦ ♦

Wednesday, December 17, 1997, 1:00 p.m.

221 West Sixth Street, Suite 328

Austin

Board of Directors

AGENDA:

Call to Order; Roll Call; Review and Approval of the Minutes of the October 17–18, 1997 Board Meeting; Action Items; Consideration of Proposed 1998 Internal Audit Plan; Consideration of Election of Organizational Effectiveness Committee for 1998; Election of Vice Chair and Secretary of the Board for 1998; Consideration of Amendments to Committee Job Descriptions; Financial Report; Status Report; Informational Items; Report of the Administration Committee; Report of the Effectiveness Committee; Public participation; Executive Session; Action Items Resulting from Executive Session Deliberations; Announcements; Adjourn.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, (512) 404–7142.
Filed: December 9, 1997, 3:32 p.m.

TRD-9716554

♦ ♦ ♦

Texas Council on Workforce and Economic Competitiveness

Thursday, December 11, 1997, 8:30 a.m.

John H. Regan State Office Building, Room 106, Corner 15th and North Congress Avenue

Austin

AGENDA:

8:30 a.m. — Call to Order, Approval of Minutes, Public Comment, (N.Central Texas WFDB), Announcements; Council Director's Departure, Introduction of New Council Director; Director's Report; Break; Strategic Plan for Workforce Development (Strategic Planning Committee Chair David Mooney and Facilitator Cora Hilliard will head a Council discussion on the process and timelines for updating the state's strategic plan for workforce development. Members will discuss the vision and mission for workforce development as well as key issues); Strategic Plan Wrap-Up; 11:45 a.m. — Lunch at Capitol Extension Cafeteria (Update on Texas Skill Standards Board and Report on the CY 96 Title IIB Summer Youth Program); 12:45 p.m. — Break; 1:00 p.m. — Executive Committee's Report (return to Reagan Building)- Ratification of 11/4/97 Executive Committee's approval of the following local workforce development board plans: Action Item: — W. Central Texas Local Workforce Development Board (LWDB) Plan and Action Item: Gulf Coast LWDB Plan; Action Item: Approval of LWDB Plans (received subsequent to Executive Committee Meeting); Action Item: FFY 1998 State Plan of Operation Texas Food Stamp Employment and Training Program; Discussion, Consideration and Possible Action on the Redesignation of the Balance of Tarrant County Service Delivery Area (SDA) and City of Fort Worth SDA, pursuant to U.S.C.A., Title 29, Chapter 19, §§1511(c) band 1515(c), Job Training Partnership Act; Discussion, Consideration and Possible Action on posting notice in the Texas Register of the Redesignation of Job training Partnership Act (JTPA) SDAs desiring merger to submit the petitions required by law for such action to the Texas Council on Workforce and Economic Competitiveness no later than December 31, 1997; Briefing Item: Adoption of the Welfare-to-Work Formula Grant Submission; Dialogue on Council Operations (Chair, Council Director, and Facilitator will engage Council members in a dialogue on Council operations. Members will discuss restructuring of operations, internal and external communications, committee structure and appointments, meeting dates and packets, work priorities and budget; Other Business- Status Report on School -To- Work; Adjourn..

Note: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 936–8103 (or Relay Texas 800–735–2988) at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 936–8103.
Filed: December 3, 1997, 4:18 p.m.

TRD-9716222

♦ ♦ ♦

Texas Workforce Commission

Tuesday, December 16, 1997, 9:00 a.m.

101 East 15th Street, Room 644, TWC Building

Austin

AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to House Bill 2777; (2) publication on the *Texas Register* of proposed incentive and sanction rule for local workforce boards; (3) potential and pending applications for certification of local workforce development boards; (4) recommendations to TCWEC of operational plans of local workforce development board; (5) approval of local workforce board or private industry council nominees; (6) acceptance of donations of child care matching funds; (7) publication in the Texas Register of proposed repeal of Chapter 811 (JOBS) and new Chapter 811 relating to local innovation grants, including Micro Enterprise, Texans Work, Wheels for Work; TANF Employment Program and Full Employment Pilot Project; Subsidized Employment and Individual Development Accounts; House Bill One Rider 27(b), Long-Term Success for TANF Recipients; Senate Bill 60 requiring parenting skills training, education and training activities, and House Bill 3428 procedures relieving victims of family violence from certain welfare reform requirements; (8) adoption of amendments to TWC rule relating to Child Labor (40 TAC Chapter 817); (9) publication in the Texas Register of proposed repeal of Chapter 819 (Interagency Matters) and new Chapter 800 Subchapter D; (10) publication in the Texas Register of proposed new Chapter 827 Communities in Schools rules. Presentation of Dr. William Archer, Commissioner of Health, Texas Department of Health, on future goals, objectives and directives of the Texas Department of Health, Discussion regarding; proposed new Chapter 819 Payment of Wages rules implementing Chapter 61, Texas Labor Code; allowing local workforce development board to determine what programs they will administer and whether or not to set deadlines on the boards' plan submissions; and regarding the rate of interest on the late refunds required by Texas Education Code §132.061(e) used to deter proprietary schools from retaining student funds. EXECUTIVE SESSION pursuant to Government Code §551.074 to discuss the duties and responsibilities of the Executive Staff and other personnel; §551.971(1) concerning the pending litigation of the Texas AFL-CIO v. TWC; TSEU/CWA Local 6184, AFL/CIO v. TWC; and Guiterrez v. TEC; and §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss the Open Meetings Act and Administrative Procedures Act; Actions, if any, resulting from executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases; consideration and action on higher level appeals in unemployment compensation cases on Dockets 50 and 51; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463–7833.
Filed: December 8, 1997, 4:08 p.m.

TRD-9716504

♦ ♦ ♦

Regional Meetings

Meetings filed December 3, 1997

Austin Transportation Study, Policy Advisory Committee, met at Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Streets, Austin, December 8, 1997 at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West Second Street, Austin, Texas 78701, (512) 499–2275. TRD-9716226.

Blanco County Appraisal District, 1997 Board of Directors, met at 200 North Avenue G, Johnson City, December 9, 1997 at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (830) 868–4013. TRD-9716211.

Brown County Appraisal District, Board of Directors, met at 403 Fisk Avenue, Brownwood, December 8, 1997 at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643–5676. TRD-9716225.

Concho Valley Workforce Development Board, met at 1621 University, San Angelo, December 11, 1997 at 2:00 p.m. Information may be obtained from Judge Sidney Mabry, P.O. Box 770, Mertzon, Texas 76941, (915) 835–4361. TRD-9716227.

Creedmoor Maha Water Supply Corporation, Monthly Board Meeting, was held at 1699 Laws Road, Mustang Ridge, December 10, 1997 at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 78610, (512) 243–2113. TRD-9716203.

Lometa Rural Water Supply Corporation, Board of Directors, met at 506 West Main Street, Lometa, December 8, 1997, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752–3505. TRD-9716218.

Panhandle Regional Planning Commission, met at 415 West Eighth Street, Amarillo, December 11, 1997 at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, (806) 372–3381. TRD-9716220.

Workforce Development Board of the Coastal Bend, Board of Directors, met at Nueces County Building, Auditorium, 710 East Main Avenue, Robstown, December 10, 1997 at 4:00 p.m. Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, Corpus Christi, Texas 78401, (512) 889–5300, extension 107. TRD-9716224.

Meetings filed December 4, 1997

Bi-County Water Supply Corporation, met at Arch Davis Road, FM 2254, Pittsburg, December 9, 1997 at 7:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 75686, (903) 856–5840. TRD-9716251.

Brazos River Authority, Officers and Committee Chairmen, Board of Directors, met at 700 San Jacinto, Austin, December 11, 1997 at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714–7555, (254) 776–1441. TRD-9716249.

Brazos Valley Council of Governments, met with revised agenda, at 1706 East 29th Street, Bryan, December 10, 1997 at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805–4128, (409) 775–4244. TRD-9716246.

Capital Area Planning Council, Economic Development District, Executive Board Meeting, met at 3401 IH35, at Woodward, Austin, December 10, 1997 at 11:40 a.m. Information may be obtained from Betty Voights, 2512 South IH35, Suite 220, Austin, Texas 78704, (512) 443–7653. TRD-9716289.

Cass County Appraisal District, Board of Directors, met at 502 North Main Street, Linden, December 9, 1997 at 7:00 p.m. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, (903) 756–7545. TRD-9716238.

Colorado River Municipal Water District, Board of Directors, met at 400 East 24th Street, Big Spring, December 10, 1997 at 10:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721, (915) 267–6341. TRD-9716287.

Deep East Texas Council of Governments, Board of Directors and Grants Applications, Review Committee, met at Highway 190 West,

St. Michael's Catholic Church, Jasper, December 16, 1997 at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384–5704. TRD-9716241.

Denton Central Appraisal District, Appraisal Review Board, met at 3911 Morse Street, Denton, December 17, 1997 at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202–2816, (940) 566–0904. TRD-9716261.

Edwards Central Appraisal District, Board of Directors, met at 408 Austin Street, County Annex Building, Rocksprings, December 8, 1997 at 10:00 a.m. Information may be obtained from Wiley Rudasill, P.O. Box 858, Rocksprings, Texas 78880, (210) 683–4189. TRD-9716290.

Edwards Aquifer Authority, Legal Committee, met at 1615 North St. Mary's Street, San Antonio, December 8, 1997, at 9:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9716228.

Edwards Aquifer Authority, Special Board Meeting, met at 1615 North St. Mary's Street, San Antonio, December 9, 1997, at 4:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9716229.

Edwards Aquifer Authority, Board Meeting, met at 1615 North St. Mary's Street, San Antonio, December 9, 1997, at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9716230.

Garza Central Appraisal District, Board of Directors, met at 124 East Main Street, Post, December 11, 1997, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495–3518. TRD-9716253.

Hays County Appraisal District, Board of Directors, met at 21001 North IH35, Kyle, December 11, 1997 at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, (512) 268–2522. TRD-9716288.

Hays County Appraisal District, Appraisal Review Board, met at 21001 North IH35, Kyle, December 15, 1997 at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, (512) 268–2522. TRD-9716254.

Heart of Texas Council of Governments, Local Workforce Development Board, met at 320 Franklin Avenue, Waco, December 9, 1997 at 5:30 p.m. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, (254) 756–7822. TRD-9716255.

Heart of Texas Council of Governments, Executive Committee, met at 320 Franklin Avenue, Waco, December 11, 1997 at 10:00 a.m. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, (254) 756–7822. TRD-9716256.

Henderson County Appraisal District, Board of Directors, met at 1751 Enterprise Street, Athens, December 11, 1997, at 5:30 p.m. Information may be obtained from Lori Fetterman, 1651 Enterprise Street, Athens, Texas 75751, (903) 675–9296. TRD-9716262.

Kempner Water Supply Corporation, Monthly Board of Directors Meeting, met at Kempner Water Supply Corporation Offices, Highway 190, Kempner, December 9, 1997 at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932–3701. TRD-9716252.

Mason County Appraisal District, Board of Directors, met at 210 Westmoreland, Mason, December 10, 1997, at 11:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347–5989. TRD-9716260.

Middle Rio Grande Development Council Area Agency on Aging, Area Advisory Council on Aging, met at 209 North Getty Street, Uvalde, December 10, 1997 at 10:00 a.m. Information may be obtained from Tammye Carpinteyro, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876–3533. TRD-9716234.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, December 9, 1997 at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771–2034. TRD-9716250.

STED Corporation, Board of Trustees, met at Commissioners Courtroom, Courthouse Annex, Zapata, December 11, 1997 at 10:00 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas, 78004–2187, (956) 722–3995. TRD-9716236.

South Texas Development Council, Board of Directors, met at Commissioners Courtroom, Courthouse Annex, Zapata, December 11, 1997, at 11:00 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044–2187, (956) 722–3995. TRD-9716235.

Sulphur-Cypress SWCD #419, met at 1809 West Ferguson, Mount Pleasant, December 10, 1997 at 9:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson Road, Suite D, Mount Pleasant, Texas 75455, (903) 572–5411. TRD-9716242.

Meetings filed December 5, 1997

Andrews Center, Board of Trustees, met at 2323 West Front Street, Board Room, December 11, 1997 at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 535–7338. TRD-9716338.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors Executive Session, met at 1124A Regal Row, Austin, December 11, 1997 at 8:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9716339.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, called meeting, met at 1124A Regal Row, Austin, December 11, 1997 at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9716341.

Carson County Appraisal District, Board of Directors, met at 102 Main Street, Panhandle, December 10, 1997, at 9:00 a.m. Information may be obtained from Donita Davis, Box 970, Panhandle, Texas 79068, (806) 537–3569. TRD-9716377.

Central Texas Water Supply Corporation, Negotiating Committee, met at 4020 Lakecliff Drive, Harker Heights, December 10, 1997 at 5:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698–2779. TRD-9716381.

Central Texas Water Supply Corporation, Board, met at 4020 Lakecliff Drive, Harker Heights, December 10, 1997 at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698–2779. TRD-9716382.

Coleman County Water Supply Corporation, Board of Directors, met at 214 Santa Anna Avenue, December 10, 19997 at 1:30 p.m.

Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625–2133. TRD-9716321.

Concho Valley Workforce Development Board, met at 1621 University, San Angelo, December 11, 1997, at 2:00 p.m. Information may be obtained from Irion County Judge, Sidney Mabry, P.O. Box 770, Mertzon, Texas 76941, (915) 835–4361, fax: (915) 835–2008. TRD-9716356.

Coryell City WSD, Board of Directors, met at 9440 FM 929, Gatesville, Gatesville, December 9, 1997, 7:00 p.m. Information may be obtained from Helen Swift, 9440 FM 929, Gatesville, Texas 76528, (254) 865–6089. TRD-9716378.

Dallas Area Rapid Transit, Audit Committee, met at 1401 Pacific Avenue, Conference Room "B", First Floor, Dallas, December 9, 1997 at 11:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163. TRD-9716360.

Dallas Area Rapid Transit, Committee-of-the-Whole, met at 1401 Pacific Avenue, Conference Room "C", Dallas, December 9, 1997 at 1:00 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163. TRD-9716370.

Dallas Area Rapid Transit, Board of Directors, met in the Board Room, First Floor, 1401 Pacific Avenue, Board Room, First Floor, Dallas, December 9, 1997 at 6:30 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163. TRD-9716369.

Education Service Center, Region One, Board of Directors, met at 200 South 10th Street, Suite 1700, McAllen, December 10, 1997 at 6:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (210) 383–5611. TRD-9716333.

Education Service Center, Region Two, Board of Directors, met at 209 North Water, Corpus Christi, December 11, 1997 at 6:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, (512) 883–9288, extension 2200. TRD-9716311.

Education Service Center, Region VIII, Board of Directors, met at 1000 Country Club Road, Mt. Pleasant County Club, Mt. Pleasant, December 17, 1997 at 6:00 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456–1894, (903) 572–8551. TRD-9716330.

Education Service Center, Region XV, Board of Directors, met at 612 South Irene Street, San Angelo, December 11, 1997 at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658–6571. TRD-9716380.

Ellis County Appraisal District, Appraisal Review Board, met at 400 Ferris Avenue, Waxahachie, December 9, 1997 at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75168, (972) 937–3552. TRD-9716304.

Ellis County Appraisal District, Board of Directors, met at 400 Ferris Avenue, Waxahachie, December 9, 1997 at 7:30 p.m. Information may be obtained from Kathy A. Rodriguez, P.O. Box 878, Waxahachie, Texas 75168, (972) 937–3552. TRD-9716316.

Gonzales County Appraisal District, Board of Directors, met at 928 St. Paul Street, Gonzales, December 11, 1997 at 6:00 p.m. Information may be obtained from Lona Cleveland, or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672–2879 or fax: (210) 672–8345. TRD-9716393.

Heart of Texas Region MHMR Center, Board of Trustees, met at 110 South 12th Street, Waco, December 10, 1997, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas , 76703, (817) 752–3451, extension 290. TRD-9716340.

Hockley County Appraisal District, Board of Directors, met at 1103 Houston Street, Levelland, December 8, 1997 at 6:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894–9654. TRD-9716315.

Hockley County Appraisal District, Appraisal Review Board, met at 1103 Houston Street, Levelland, December 9, 1997 at 7:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894–9654. TRD-9716314.

Hunt County Appraisal District, Board of Directors, met at 4801 King Street, Greenville, December 11, 1997 at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454–3510. TRD-9716331.

Johnson County Rural Water Supply Corporation, Personnel Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, December 8, 1997 at 6:00 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, (817) 645–6646. TRD-9716398.

Lower Colorado River Authority, Planning and Public Policy Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, December 9, 1997 at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473–3304. TRD-9716332.

MHMR Authority of Brazos Valley, Board of Trustees, met at Highway 21 East, Madisonville, December 11, 1997 at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77802, (409) 822–6467. TRD-9716358.

Middle Rio Grande Development Council, Texas Review and Comment System Committee, met at MRGDC Operations, 209 North Getty, Uvalde, December 10, 1997, at 4:00 p.m., rescheduled from November 26, 1997. Information may be obtained from Tim Trevino, 209 North Getty Street, Uvalde, Texas 78801, (210) 278–4151, fax: (210) 278–2929. TRD-9716322.

Middle Rio Grande Development Council, met at 920 East Main Street, Sage Room, Holiday Inn, Uvalde, December 11, 1997, Committee meetings start at 10:00 a.m., Full Board at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (830) 876–1200. TRD-9716371.

Palo Pinto Appraisal District, Appraisal Review Board, met at 200 Church Avenue, Palo Pinto, December 10, 1997 at 1:30 p.m. Information may be obtained from Carol Holmes or Donna Hartzell, P.O. Box 250, Palo Pinto, Texas 76484–0250, (940) 659–1239. TRD-9716312.

Palo Pinto Appraisal District, Board of Directors, met at 200 Church Avenue, Palo Pinto, December 18, 1997 at 3:00 p.m. Information may be obtained from Carol Holmes or Donna Hartzell, P.O. Box 250, Palo Pinto, Texas 76484–0250, (940) 659–1239. TRD-9716373.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, December 9, 1997, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771–2034. TRD-9716301.

Meetings filed December 8, 1997

Ark-Tex Council of Governments, Private Industry Council Executive and Planning Committees, met at Mt. Pleasant Chamber of Com-

merce, Mt. Pleasant, December 16, 1997 at 1:30 p.m. Information may be obtained from Jeanie Callicott, P.O. Box 5307, Texarkana, Texas 75505, (903) 832–8636. TRD-9716510

Austin-Travis County MHMR Center, Executive Committee, met at 1430 Collier Street, Board Room, Austin, December 11, 1997, 4:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9716486.

Austin-Travis County MHMR Center, Board of Trustees, met at 1430 Collier Street, Board Room, Austin, December 11, 1997, 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9716455.

Austin-Travis County MHMR Center, Board of Trustees, met with revised agenda, at 1430 Collier Street, Board Room, Austin, December 11, 1997, 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9716487.

Bandera County Appraisal District, Agricultural Advisory Board, met at 1206 Main Street, Bandera, December 10, 1997 at 1:00 p.m. Information may be obtained from P.H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (830) 796–3039, fax: (830) 796–3672. TRD-9716454.

Cass County Appraisal District, Appraisal Review Board, met at 502 North Main Street, Linden, December 16, 1997 at 9:00 a.m. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, (903) 756–7545. TRD-9716490.

Chief Elected Officials Council of the Coastal Bend (Workforce Development Area), CEO Council, met at 2910 Leopard Street, Corpus Christi, December 12, 1997 at 3:00 p.m. Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, Corpus Christi, Texas 78401, (512) 889–5300, Ext. 107. TRD-9716498.

Dallas Central Appraisal District, Appraisal Review Board Meeting, met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, December 17, 1997 at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631–0520. TRD-9716410.

Deep East Texas Council of Governments, Regional 911 Advisory Council, met at St. Michael's Catholic Church, Highway 190 West, Jasper December 16, 1997 at 10:30 a.m. Information may be obtained from Everette D. Alfred, 274 East Lamar, Jasper, Texas 75951, (409) 384–5704. TRD-9716412.

Dewitt County Appraisal District, Board of Directors, met at 103 Bailey Street, Cuero, December 16, 1997 at 7:30 p.m. Information may be obtained from Elwood Gaus, P.O. Box 4, Cuero, Texas 77954, (512) 275–5753. TRD-9716411.

Dewitt County Appraisal District, Appraisal Review Board, met at 103 Bailey Street, Cuero, December 17, 1997 at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275–5753. TRD-9716474.

Education Service Center, Region V, Board, will meet at Region Five Conference Center, 1750 Highway 96 Bypass, Silsbee, December 19, 1997, at 10:00 a.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703–4299, (409) 838–5555. TRD-9716422.

El Oso Water Supply Corporation, Board of Directors, met at FM 99, Karnes City, December 9, 1997 at 7:00 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (830) 780–3539. TRD-9716485.

Falls County Appraisal District, Board of Directors, met at Falls County Courthouse, Intersections Highways Six and Seven, Marlin, December 15, 1997, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (254) 883–2543. TRD-9716434.

Falls County Appraisal District, Appraisal Review Board, met at Falls County Courthouse, Intersections Highways Six and Seven, Marlin, December 16, 1997, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (254) 883–2543. TRD-9716433.

Grand Parkway Association, Board of Directors, met at 4544 Post Oak Place, Suite 222, Houston, December 15, 1997, at 10:00 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, (713) 965–0871. TRD-9716418.

Gray County Appraisal District, Appraisal Review Board, met at 815 North Sumner, Pampa, December 11, 1997 at 3:00 p.m. Information may be obtained from Jennifer Read, P.O. Box 836, Pampa, Texas 79066, (806) 665–0791. TRD-9716491.

Jasper County Appraisal District, Board of Directors, met at 137 North Main Street, Jasper, December 16, 1997 at 6:00 p.m. Information may be obtained from David W. Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384–2544. TRD-9716508.

Jim Wells County Soil and Water Conservation District, met at 2287 North Texas Boulevard, #5, Alice, December 10, 1997 at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 2287 North Texas Boulevard, #5, Alice, Texas 78332, (512) 668–8363. TRD-9716408.

Lee County Appraisal District, Appraisal Review Board, met at 218 East Richmond Street, Giddings, December 18, 1997, at 11:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542–9618. TRD-9716444.

Lubbock Regional MHMR Center, Board of Trustees, Nominating Committee, met at 1602 10th Street, Board Room, Lubbock, December 12, 1997, at Noon. Information may be obtained from Danette Castle, P.O. Box 2828, Lubbock, Texas 79408, (806) 766–0202. TRD-9716450.

Lubbock Regional MHMR Center, Board of Trustees, Program Committee, met at 1602 10th Street, Board Room, Lubbock, December 16, 1997, at Noon. Information may be obtained from Danette Castle, P.O. Box 2828, Lubbock, Texas 79408, (806) 766–0202. TRD-9716452.

Lubbock Regional MHMR Center, Board of Trustees, Resources Committee, met at 1602 10th Street, Conference Room, Lubbock, December 18, 1997, at 4:00 p.m. Information may be obtained from Danette Castle, P.O. Box 2828, Lubbock, Texas 79408, (806) 766–0202. TRD-9716451.

Lubbock Regional MHMR Center, Board of Trustees, will meet at 1602 10th Street, Board Room, Lubbock, December 22, 1997, at Noon. Information may be obtained from Danette Castle, P.O. Box 2828, Lubbock, Texas 79408, (806) 766–0202. TRD-9716453.

Manville Water Supply Corporation, Regular Board Meeting, met at 108 North Commerce Street, Coupland, December 11, 1997 at 7:00 p.m. Information may be obtained from Tony Graf, 108 North Commerce Street, Coupland, Texas 78615, (512) 272–4044. TRD-9716421.

Mills County Appraisal District, Board of Directors, met at Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, Decem-

ber 16, 1997 at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648–2253. TRD-9716505.

North Central Texas Council of Governments, (NCTCOG) Transportation Department, Regional Transportation Council, met at Fort Worth City Hall, City Council Chambers, 1000 Throckmorton Street, Fort Worth, December 16, 1997 at 2:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 695–9240. TRD-9716414.

North Central Texas Council of Governments, (NCTGOG) Transportation Department, Regional Transportation Council, met at Coppell City Hall, City Council Chambers, 255 Parkway Boulevard, Coppell, December 16, 1997 at 7:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 695–9240. TRD-9716415.

North Central Texas Council of Governments, (NCTGOG) Transportation Department, Regional Transportation Council, met at Dallas City Hall, City Council Chambers, 1500 Marilla Street, Dallas, December 18, 1997 at 9:30 a.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 695–9240. TRD-9716416.

Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, December 15, 1997 at 10:00 a.m. Information may be obtained from W.T. Ballard, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639–7538. TRD-9716443.

North Texas Municipal Water District, Board of Directors, met at Administration Office, 505 East Brown Street, Wylie, December 18, 1997 at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (972) 442–5405. TRD-9716492.

San Antonio River Authority, Board of Directors, met at 100 East Guenther Street, Boardroom, San Antonio, December 17, 1997 at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283–0027, (210) 227–1373. TRD-9716482.

Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, December 18, 1997, 8:30 a.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573–8549. TRD-9716449.

Surplus Lines Stamping Office of Texas, Board of Directors, met at Austin Club, 110 East Ninth Street, Austin, December 16, 1997 at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, (512) 346–3274. TRD-9716509.

Texas Panhandle Mental Health Authority, Board of Trustees, met at 1500 South Taylor Street, Amarillo, December 11, 1997, 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116–3250, (806) 349–5680, fax: (806) 337–1035. TRD-9716413.

Meetings filed December 9, 1997

Central Counties Center for MHMR Services, Board of Trustees, met with emergency revised agenda, at 304 South 22nd Street, Temple, December 11, 1997, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (254) 298–7010. TRD-9716572.

Central Texas Council of Governments, Executive Committee Officers, met at Bell County Expo Center, Special Events Room, Belton, December 11, 1997 at 11:00 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (254) 939–1801. TRD-9716522.

Deep East Texas Council of Governments, Grants Application Review Committee, met at St. Michael's Catholic Church, Highway 190 West, Jasper, December 16, 1997, at 11:00 a.m. Information may be obtained from Andy Phillips, 274 East Lamar Street, Jasper, 75951, (409) 384–5704. TRD-9716543.

Education Service Center, Region IX, Board of Directors, met at 301 Loop 11, Wichita Falls, December 17, 1997, at 12:30 p.m. Information may be obtained from Dr. Ron Preston, 301 Loop 11, Wichita Falls, Texas 76305, (940) 322–6928. TRD-9716565.

Education Service Center, Region 20, Board of Directors, met at 1314 Hines Avenue, San Antonio, December 17, 1997, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208–1899, (210) 299–2471. TRD-9716567.

Hickory Underground Water Conservation District One, Board and Advisors, met at Fair Oaks Farm, Rochelle, December 14, 1997 at 6:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597–2785. TRD-9716526.

Houston-Galveston Area Council, Board of Directors, 3555 Timmons Lane, Conference Room A, Second Floor, Houston, December 16, 1997, 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, (713) 627–3200. TRD-9716527.

Liberty County Central Appraisal District, Appraisal Review Board, met at 315 Main Street, Liberty, December 17, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336–5722. TRD-9716552.

Liberty County Central Appraisal District, Board of Directors, met at 315 Main Street, Liberty, December 18, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336–5722. TRD-9716553.

Liberty County Central Appraisal District, Ag. Advisory Board, met at 315 Main Street, Liberty, December 18, 1997 at 10:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336–5722. TRD-9716566.

Lower Neches Valley Authority, Board of Directors, met at 7850 Eastex Freeway, Beaumont, December 16, 1997, at 10:30 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892–4011. TRD-9716528.

North Central Texas Council of Governments, Executive Board, met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, December 18, 1997 at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 640–3300. TRD-9716540.

Upper Rio Grande Workforce Development Board, met at 5919 Brook Hollow, El Paso, December 13, 1997, 8:30 a.m. Information may be obtained from Norman R. Haley, 5919 Brook Hollow, El Paso, Texas 79925, (915) 772–5627, extension 406. TRD-9716534.

Wise County Appraisal District, Board of Directors, met at 206 South State Street, Decatur, December 16, 1997, 7:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (940) 627–3081. TRD-9716533.

Meetings filed December 10, 1997

Burke Center, Board of Trustees, will meet at 4101 South Medford, Lufkin, December 22, 1997, 1:00 p.m. Information may be obtained from Debra Fox, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639–1141. TRD-9716586.

Education Service Center, Region One, Board of Directors, met at Embassy Suites Hotel, 1800 South Second Street, McAllen, December 16, 1997 at 7:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (210) 383–5611. TRD-9716574.

Education Service Center, Region III, Board of Directors, met at 1905 Leary Lane, Victoria, December 15, 1997 at 3:00 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573–0731. TRD-9716597.

Guadalupe-Blanco River Authority, Retirement and Benefit Committee, met at Tapatio Springs Resort, end of Johns Road, Boerne, December 17, 1997 at 8:00 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (830) 379–5822. TRD-9716577.

Guadalupe-Blanco River Authority, Audit Committee, met at Tapatio Springs Resort, end of Johns Road, Boerne, December 17, 1997 at 9:30 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (830) 379–5822. TRD-9716578.

Guadalupe-Blanco River Authority, Board of Directors, met at Tapatio Springs Resort, end of Johns Road, Boerne, December 17, 1997 at 10:00 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (830) 379–5822. TRD-9716579.

Harris County Appraisal District, Board of Directors, met at 2800 North Loop West, Eighth Floor, Houston, December 17, 1997 at 9:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 9200975, Houston, Texas 77292–0975 , (713) 957–5291. TRD-9716598.

Jones County Appraisal District, Board of Directors, met at 1137 East Court Plaza, Anson, December 18, 1997 at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823–2422. TRD-9716588.

Middle Rio Grande Development Foundation, Inc., Board of Directors, met at Holiday Inn Sage Room, 920 East Main, Uvalde, December 17, 1997 at 11:30 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199 Carrizo Springs, Texas 78834, (830) 876–3533. TRD-9716604.

Middle Rio Grande Development Council, Board of Directors, met at Holiday Inn Sage Room, 920 East Main, Uvalde, December 17, 1997 at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199 Carrizo Springs, Texas 78834, (830) 876–3533. TRD-9716603.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Correction of Error

The Texas Commission on Alcohol and Drug Abuse proposed amendments to 40 TAC §§150.3–150.8, 150.10, 150.31–150.33, 150.36–150.39, 150.52, 150.53, and 150.61. The rules appeared in the November 28, 1997, issue of the *Texas Register*, (22 TexReg 11322).

On page 11331, subsection (f)(2), the language was struck-thru, indicating deletion of the language; however, the language should be underlined to indicate it is new language.

♦ ♦ ♦

Statewide Service Delivery Plan

The Texas Commission on Alcohol and Drug Abuse (TCADA) has developed an initial *Statewide Service Delivery Plan* to address how substance abuse services can be more efficiently and effectively distributed throughout the state. This *Statewide Service Delivery Plan* will be presented to the commission's board January 15, 1998.

The draft plan can be viewed on the commission's web page at www.tcada.state.tx.us. If a hard copy is required, please contact Rand Harris at (800) 832-9632, extension 6793. Comments may be sent to:

Texas Commission on Alcohol and Drug Abuse

Attn: Rand Harris

9001 North IH 35, Suite 105

Austin, Texas 78753-5233

Or e-mail to rand_harris@tcada.state.tx.us.

Final copies of the plan will be made available after February 1, 1998.

Issued in Austin, Texas, on December 10, 1997.

TRD-9716591
Karen Pettigrew
Deputy for Legal Affairs
Texas Commission on Alcohol and Drug Abuse
Filed: December 10, 1997

♦ ♦ ♦

Ark-Tex Council of Governments

Request for Proposal for Provision of Child Care Training

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of Child Care Training for Child Care Providers of licensed day care centers, group day homes, registered family homes and relatives providing child care through a grant provided by the Texas Workforce Commission, Child Care Training Project (CCTP). The training sessions will be provided in the following Texas counties: Bowie, Cass, Franklin, Hopkins, Lamar, and Titus.

The training sessions will be scheduled between February, 1998 and July 31, 1998.

Potential respondents may obtain a copy of the request for proposal by contacting Lou Harris, Child Care Training Specialist, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832- 8636. The deadline for proposal submission is January 15, 1998, at 5:00 p.m.

Issued in Texarkana, Texas, on December 8, 1997.

TRD-9716520
James C. Fisher, Jr.
Executive Director
Ark-Tex Council of Governments
Filed: December 8, 1997

♦ ♦ ♦

Office of the Attorney General

Notice of Request for Information

The Office of the Attorney General (OAG) hereby gives notice of a Request for Information (RFI). The purpose of this RFI is to obtain information about the services that are available within the private legal and vendor community for providing full Foster Care Services in Harris County, the potential costs for obtaining such services, and other pertinent information that may assist the OAG in its development of a future procurement for such services. Any Foster Care services to be performed by private counsel/vendors would be performed under the direction of the Child Support Division of the OAG. The performance of these services requires legal representation

and the OAG invites responses from non-attorney vendors that can provide the required legal services through in-house counsel or other avenues.

The Vendor shall be responsible for reviewing certified referrals, obtaining locate information, enforcing and modifying court orders, setting up parentage testing, monitoring, and documenting actions on each case. The OAG estimates the number of Foster Care cases received annually is 400.

This RFI is to obtain information only and does not constitute a formal request to purchase. Estimated pricing information is requested for planning and budgetary purposes only. Notice of any solicitation resulting from this RFI will be published in the Texas Register.

Copies of the Request for Information may be requested from: Mr. David Liebich, Purchasing Manager, Office of the Attorney General, 300 West 15th Street, 3rd Floor, Austin, Texas 78701 or by facsimile (512) 397-1607. The request should include the name of the Requestor, the Address of the Requestor, the name of a contact person, and a telephone and fax number for that person. Requests for an RFI may be sent to the Attorney General beginning on the date that this notice is published in the *Texas Register* .

The closing date for the receipt of responses will be 3:00 p.m. on January 19, 1998.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716432
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: December 8, 1997

♦ ♦ ♦

Comptroller of Public Accounts

Legal Banking Holidays

Texas Tax Code Annotated §111.053(b) requires that, before January 1 of each year, the Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. Pursuant to the Federal Reserve Bank of Dallas Notice 97-68, dated August 11, 1997, the Federal Reserve Bank of Dallas and its offices at El Paso, Houston, and San Antonio will observe the following holidays for calendar year 1998 and will not be open on the dates indicated below. Banks operating in Texas may, but are not required to close on these dates:

Saturdays and Sundays

Thursday, January 1, New Years Day

Monday, January 19, Martin Luther King, Jr. Day

Monday, February 16, Presidents Day

Monday, May 25, Memorial Day

Monday, September 7, Labor Day

Monday, October 12, Columbus Day

Wednesday, November 11, Veterans Day

Thursday, November 26, Thanksgiving Day

Friday, December 25, Christmas Day

Issued in Austin, Texas, on December 9, 1997.

TRD-9716563
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: December 9, 1997

♦ ♦ ♦

Notice of Request for Proposals

Notice of Request for Proposals For an Analysis of Recruitment, Retention and Financial Aid in Certain Institutions of Higher Education in the State of Texas: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) for the performance of an analysis of recruitment, retention and financial aid at selected public institutions of higher education. More specifically, in response to the recent opinion of the United States Court of Appeals for the Fifth Judicial Circuit in Hopwood v. State, 78 F.3d 932 (5th Cir. 1996), reh'g en banc denied, 84 F.3d 722 (5th Cir. 1996), cert. denied, __ U.S. __, 116 S.Ct. 2580 (1996) (Hopwood), the 1997 Texas State Legislature (75th Regular Session) enacted legislation and passed a legislative rider to the General Appropriations Act directing the Comptroller, with the assistance of the Texas Higher Education Coordinating Board (THECB) and the state's public institutions of higher education, to conduct a disparity study (the "Study") of the state's public institutions of higher education to determine whether past acts of discrimination by institutions of higher education of this state have created any present effects of such past discrimination. The Legislature specified that the Study shall address student recruitment, admissions, retention, and financial aid. The services sought under this RFP shall be a component part of the overall study. The successful proposer will be expected to begin performance of the contract on or about February 2, 1998.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East. 17th Street, Room G-24, Austin, Texas, 78744, telephone number: (512) 936-5854 or (512) 463-4904, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, December 19, 1997, between 4:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4:00 p.m. (CZT) on Monday, December 29, 1997.

Closing Date: Proposals must be received in Legal Counsel's Office no later than 4:00 p.m. (CZT), on Tuesday, January 20, 1998. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation, prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP-December 19, 1997, 4:00 p.m. CZT; Mandatory Letter of Intent

and Questions Due - December 29, 1997, 4 p.m. CZT; Proposals Due-January 20, 1998, 4:00 p.m. CZT; Contract Execution-no later than February 2, 1998, or as soon thereafter as practical. Issued in Austin, Texas, on December 10, 1997. Walter Muse Legal Counsel Comptroller of Public Accounts

Issued in Austin, Texas, on December 10, 1997.

TRD-9716599
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: December 10, 1997

♦ ♦ ♦

Due to an error by Texas Register the text for the following Request for Proposal for the Hamilton ISD, submitted by the Comptroller of Public Accounts, was inadvertently left out of the December 5, 1997, issue of the Texas Register (22 TexReg 12156). The Request for Proposal for the Texas Southern University was published in the December 12, 1997, issue of the Texas Register (22 TexReg 12304).

Request for Proposals for the Hamilton ISD

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist in conducting a management and performance review of the Hamilton Independent School District. From this review, findings and recommendations will be developed for containing costs, improving management strategies, and ultimately promoting better education for Texas children through school district management efficiency. The successful proposer will be expected to begin performance of the contract on or about January 21, 1998.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, December 5, 1997, between 4 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4 p.m. (CZT) on Monday, December 29, 1997.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 4 p.m. (CZT), on Monday, January 9, 1998. Proposals received after this time and date will not be considered.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. Each committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - December 5, 1997, 4 p.m. (CZT); Mandatory Letter of Intent and Questions Due - December 29, 1997, 4 p.m. (CZT); Proposals Due - January 9, 1998, 4 p.m. (CZT); and Contract Execution - January 16, 1998, or as soon thereafter as possible.

Issued in Austin, Texas, on November 25, 1997.

TRD-9715920
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: November 25, 1997

♦ ♦ ♦

Texas Education Agency

Request for Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-98-001 to award competitive grants to school districts and shared services arrangements of school districts that implement, instructional, professional training and development, and infrastructure strategies to achieve the following primary objective. All districts, including charter schools, are eligible to apply for these grants.

Description. The primary objective of the Technology Integration in Education (TIE) initiative is to improve student achievement by fully integrating technology into teaching and learning and to ensure that all Texas students are technologically literate by 2010. The TIE initiative recommends the guidelines from the Long-Range Plan for Technology, 1996-2010, to school districts and shared services arrangements of school districts as a means to achieve the primary objective.

Districts may apply for implementation grants that focus on one of the following: 1) teaching and learning, 2) educator preparation and development, 3) administration and support services, and 4) infrastructure for technology. The commissioner's access initiative reflects the implementation of the Long-Range Plan for Technology, 1996-2010, and applicants are requested to focus on this initiative. The access initiative envisions the use of technology to provide immediate access to tools, data, products and information to all stakeholders in education. Through this access, teachers, administrators, parents, business leaders and other groups of interest are connected to various sources and resources needed to enhance decision making, planning efforts, educational strategies, and learning activities. Access should be broadly defined to include the Internet, two-way video/two-way audio, CD-ROM, local or regional networks and/or satellite broadcasts.

Applications that address the commissioner's access initiative in focusing on: 1) the delivery of content and/or services; 2) the establishment of an infrastructure; and/or 3) the operation of an appropriate infrastructure will be given special consideration. Training and professional development must be a component of each of these three areas.

Dates of Project. The TIE Initiative grants will be implemented through the 1998-1999 school year. Applicants should plan for a starting date of no earlier than June 1, 1998, and an ending date of no later than August 31, 1999.

Project Amount. Texas has received approximately $35.3 million for fiscal year 1998 activities specified in Title III of the Elementary and Secondary Education Act (ESEA) legislation through the Technology Literacy Challenge Fund (TLCF) program. This RFA provides school districts and shared services arrangements of school districts an opportunity to apply for approximately $33 million in TLCF

subgrants on a competitive basis. The TIE initiative will extend through fiscal year 2001, provided subsequent federal appropriations are approved for the TLCF program. Second-year TIE funds will be used to award grants that are anticipated to range between $50,000 and $1,000,000. The final number of grants and the final dollar amount of each grant will be negotiated and will depend on the quality of the application, activities to be carried out through the local initiative, and the size and characteristics of participating school districts and consortia members, where applicable.

To the extent possible, funds shall be used by local education agencies for the following five major purposes: (1) acquiring hardware and software to improve student learning; (2) applying technology to support school reform; (3) acquiring connections to telecommunication networks to obtain access to resources and services; (4) providing ongoing professional development in the integration of technology into improvements of the school curriculum; and (5) providing better educational services for adults and families. Section 3134 of the ESEA sets out in full how local education agencies are to use funds under this program.

Applicants must use additional local resources and other sources of financial support to help maximize the effectiveness of the project goals and objectives. These grants are supplementary, not sole source funding, for the projects described in the application. Program funds shall not be obligated for expenditure prior to the effective date of the application or after the ending date of the program.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Priority will be given to applications submitted for cooperatives of school districts and to applications that are submitted in collaboration with institutions of higher education, regional education service centers, and nonprofit organizations. Special consideration will be given to districts with demonstrated need for technology and with a percentage of students identified as economically disadvantaged higher than the state average. Additionally, priority will be given to rural schools. Rural is defined as districts that either have a growth rate less than 20% and the number of students in membership is between 300 and the state median, or the number of students in membership is less than 300. This includes approximately 899 districts in the state. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any applications submitted in response to this RFA. The RFA does not commit TEA to pay any cost before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-98-001 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling the Document Control Center at (512) 463-9304. Please refer to the RFA number in your request.

The application can be downloaded from the TEA WWW page for information purposes only. The address is: http://www.tea.state.tx.us. and the application is located under "Programs – State Technology Initiatives". In order to be considered for funding, the copy obtained from the Document Control Center must be used as the official application document.

Further Information. For clarifying information about the RFA, contact Delia R. Duffey, Division of Instructional Technology, Texas Education Agency, at (512) 463-9401 or by email at: dduffey@tea.tetn.net.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, March 5, 1998, to be considered.

Issued in Austin, Texas, on December 10, 1997.

TRD-9716587
Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency
Filed: December 10, 1997

♦ ♦ ♦

General Services Commission

General Services Commission State Energy Conservation Office Notice of Contract Award

In accordance with the Texas Government Code, Section 2305.064, the State Energy Conservation Office (SECO) furnishes this notice of contract award under the Renewable Energy Demonstration Program. The Request for Proposals (RFP) was published in the October 17, 1997 issue of the *Texas Register* (22 TexReg 10444).

DESCRIPTION OF SERVICE. The contractor will conduct a series of sustainable building work sessions for state agencies, local governments, school districts and design professionals. These sessions will provide technical information for the target audiences that can be incorporated into all building practices.

NAME OF CONTRACTOR AND AMOUNT OF AWARD. The contractor selected is the Center for Maximum Potential Buildings Systems, Inc., 8604 F.M. 969, Austin, Texas 78724; (512) 928–4786 ($114,730.00.)

DUE DATE. Deliverables are due from January 1, 1998 through August 31, 1998. The final report is due 60 days after contract completion.

CONTACT: Further information can be obtained from Ms. Jane Pulaski, State Energy Conservation Office, at (512) 463-1796.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716516
Judy Ponder
General Counsel
General Services Commission
Filed: December 8, 1997

♦ ♦ ♦

Notice of Contract Extensions

In accordance with the Texas Government Code, Title 10, Subtitle F, Subchapter B, Chapter 2254, The General Services Commission, State Energy Conservation Office (SECO) publishes this notice of contract extensions under the School Energy Management Program.

Description of Service. The contracts provide energy engineering services for the School Energy Management Programs. Contractors develop and conduct energy manager training workshops, provide on-site assistance to districts participating in the Energy Efficient School Partnership Program, and deliver technical assistance to districts participating in the Energy Efficient School Partnership Program.

Name of Contractors and Extension periods. Contractors are Estes, McClure and Associates, 3608 West Way, Tyler, Texas 75703

(contract amount: $385,000); Energy Systems, 11901 Hamrich Court, Austin, Texas 78759 (contract amount: $385,000); ACR Engineering Inc., 907 South Congress Avenue, Austin, Texas 78704 (contract amount: $385,000). Effective date of all contracts was January 1, 1997. Each contract will be extended through March 31, 1998.

Contact: For further information, please contact Mr. Mel Roberts, State Energy Conservation Office, (512) 463-1757.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716518
Judy Ponder
General Counsel
General Services Commission
Filed: December 8, 1997

♦ ♦ ♦

Notice of Revisions to the Energy Conservation Design Standard for New State Buildings

The State Energy Conservation Office (SECO) a division of the General Services Commission (GSC) has revised the Energy Conservation Design Standard for New State Buildings, commonly referred to as the "Texas Standard". SECO invites public comments on its revised Texas Standard. The Standard covers new buildings and major renovation projects, while excluding single and multi-family residential buildings of three or fewer stories and building areas used primarily for industrial or commercial processes. The 1997 revisions to the Standard, were developed as a result of the latest evaluation and update of the Standard.

The purposes of the Texas Standard are: 1) to set minimum requirements for the energy efficient design of new state buildings and major renovation projects so that they may be constructed, operated, and maintained in a manner that minimizes the use of energy without constraining the building function or the comfort or productivity of the occupants; 2) to provide criteria for energy efficient design and describe methods for determining compliance with these criteria; and 3) to provide sound guidance for energy efficient design.

The Standard shall not be used to circumvent any safety, health, or environmental requirements.

Background. Pursuant to the Texas Government Code, Title 4, Subtitle D, Chapter 447, Section 447.004, the Energy Management Center (EMC) of the Governor's Office (now the State Energy Conservation Office of the General Services Commission) is authorized to adopt and implement energy conservation design standards for new state buildings and major renovations, including those of state supported institutions of higher education. The current Texas Standard is based on the American Society of Heating, Refrigerating, and Air Conditioning Engineer (ASHRAE) Standard 90.1, modified for Texas climate conditions. Section 447.004 stipulates that the EMC shall review and update the standard biennially. Prompted by the review process and concerns with perimeter insulation issues, and the need to make the Standard consistent with ongoing updates to ASHRAE Standard 90.1-1989, the Standard was revised in May 1990 and February 1993.

1997 Revisions. Basic changes incorporated into the 1997 version of the Texas Standard include the following: (1) broadening the scope of the Standard to apply to new portions of buildings, as well as to new equipment in existing buildings; (2) requiring lighting and daylighting controls in all spaces not designated for 24-hour use; (3) adding electrical metering requirements, including demand metering for services over 450 KW or 500 KVA; and (4) incorporating selected criteria of the ASHRAE 90.1-1989R standards into the following sections of the Standard: heating, ventilation, and air conditioning equipment; building shell; and water heating systems and equipment.

Contact. SECO invites public comment on its revised Texas Standard. A copy of the 1997 revision in diskette form can be obtained by calling Blanche Saldivar at the State Energy Conservation Office at (512) 463-1959 or by writing Ms. Saldivar at the General Services Commission State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047.

Please submit written comments to Felix Lopez at the above address or by fax at (512) 475-2569 by January 30, 1998.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716519
Judy Ponder
General Counsel
General Services Commission
Filed: December 8, 1997

♦ ♦ ♦

Request for Qualifications for Selection of Professional Surveying Firm

The General Services Commission (GSC), Facilities Construction and Space Management Division (the "FCSM"), P.O. Box 13047, Austin, Texas 78711-3047, hereby issues this request for statement of interest and qualifications (RFQ) for the purpose of selecting one or more surveying firms to provide professional services.

The contract(s) will provide professional surveying services to the General Services Commission, Facilities Construction and Space Management Division, for state-owned land, facilities and building in the greater Austin area. Some travel to other regions throughout the State of Texas may be required.

Statement of interest and qualifications must be submitted and time stamped at the General Services Commission, 1711 San Jacinto Street, Central Services Building, Room 180 (Bid Tabulation Room), Austin, Texas 78701, on or before 3:00 p.m., Tuesday, December 30, 1997. Copies of the full RFQ are available by calling Stacy Hatch, assistant to the Director of FCSM at (512) 463-3382.

Selection of Architect/Engineering firms will be in accordance with state procedures and GSC rules.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716400
Judy Ponder
General Counsel
General Services Commission
Filed: December 8, 1997

♦ ♦ ♦

Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

[graphic]

[graphic]

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested

in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756–3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on December 10, 1997.

TRD-9716582
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 10, 1997

♦ ♦ ♦

Notice of Request for Proposal for Evaluation of LoneSTAR Selective Contracting Programs

Purpose. The Texas Department of Health (department), Health Care Financing Associateship (HCF), Bureau of Reimbursement Analysis and Contract Compliance (BRACC), is seeking a qualified and experienced consulting firm capable of performing an independent assessment of the LoneSTAR Select I Contracting Program and an independent assessment of the LoneSTAR Select II Contracting Program. This Request for Proposal (RFP) is issued in accordance with the provisions of Government Code, Chapter 2254, concerning consulting services.

Description. The Texas Human Resources Code, §32.027 requires the development and implementation of a system of selective contracting for the provision of non-emergency inpatient hospital services. The LoneSTAR Select I Contracting Program for inpatient services provided at general acute medical/surgical hospitals was completed in December, 1994. The LoneSTAR Select II Contracting Program for acute inpatient mental health services provided at freestanding psychiatric facilities was completed in June, 1995.

The successful bidder will be responsible for evaluating the LoneSTAR Selective Contracting Programs. Phase One involves the evaluation of the LoneSTAR Select I Contracting Program for inpatient services provided at general acute medical/surgical hospitals. Phase Two involves the evaluation of the LoneSTAR Select II Contracting Program for acute inpatient mental health services provided at freestanding psychiatric facilities.

Applicable waivers of federal statutory requirements, which would otherwise conflict with the programs, have been approved by the Secretary of Health and Human Services of the federal Health Care Financing Administration (HCFA). Applicable waivers for the LoneSTAR Select I Contracting Program were initially approved on July 6, 1994. A renewal of these waivers was requested and granted on August 20, 1996. Applicable waivers for the LoneSTAR Select II Contracting Program were initially approved on March 10, 1995. A renewal of these waivers was requested and granted on August 21, 1997.

The approval of the applicable waivers of federal statutory requirements by HCFA is contingent upon the department arranging for an independent assessment of each waiver program with respect to access to care, quality of services and cost effectiveness. The results of each assessment must be submitted to HCFA no later than three months prior to the expiration date of each waiver.

The waiver approval for the LoneSTAR Select I Contracting Program expires on August 31, 1998. As such, the department must submit an independent assessment of the LoneSTAR Select I Contracting Program to HCFA on or before June 1, 1998.

The waiver approval for the LoneSTAR Select II Contracting Program expires on August 20, 1999. As such, the department must submit an independent assessment of the LoneSTAR Select II Contracting Program to HCFA on or before May 19, 1999.

The consultant will work with the department project team, oversight committee and work groups, as necessary, and produce the required products.

Eligible Applicants. The consultant must have experience in and knowledge of federal, Texas, and other state health and human services agency practices and laws relating to Medicaid, Medicaid Managed Care, and §1915(b) and §1115 waivers of the Social Security Act. The consultant should be familiar with the federal Medicaid program statutes, regulations, waiver application processes and issues, status of waivers implemented in other states, and related issues which have arisen in other states, general principles and laws relating to managed care, including Medicaid Managed Care, and knowledge of managed care markets and market analysis both nationally and in Texas.

Limitations. The department reserves the right to reject any and all offers received in response to the RFP, and to cancel the RFP if it is deemed in the best interest of the department.

Contact. Requests for information concerning the RFP may be obtained from Larry Fisher, Procurement Officer, Texas Department of Health, Health Care Financing, Mail Code Y-921, 1100 West 49th Street, Austin, Texas 78756-3199. Telephone number: (512) 794-6894. Requests for copies of the RFP must be submitted in writing to Larry Fisher at the above address or may be submitted by facsimile. Fax number: (512) 338-6544.

Deadlines. All communications concerning this RFP must be addressed in writing to Richard A. Peters, Chief, Bureau of Reimbursement Analysis and Contract Compliance, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The phys-

ical address for overnight and personal deliveries, also referred to in this notice as the "issuing office", is Richard A. Peters, Chief, Bureau of Reimbursement Analysis and Contract Compliance, Texas Department of Health, 11044 Research Boulevard, Building D, Room 400, Austin, Texas 78759. Each potential applicant is required to submit a non-binding Letter of Intent To Propose (Letter of Intent), which must be received in the issuing office no later than 4:00 p.m. on January 14, 1998. The Letter of Intent must state that the applicant is considering submitting a proposal. Only the proposals of those applicants who submit Letters of Intent will be considered. Letters of Intent which are not received timely at the issuing office will not be considered. The Letter of Intent must identify the entity that may submit a proposal in response to this RFP, and must be signed by an official of that entity. Responses to questions and other information pertaining to this procurement will be sent only to those potential applicants who submit a Letter of Intent. Potential applicants must include their fax number in the Letter of Intent to provide for the expedited transmission of information pertaining to this procurement. The Letter of Intent must be addressed to Richard A. Peters, at the address shown above. Prospective applicants are encouraged to fax Letters of Intent to (512) 338-6544 to ensure timely receipt.

By submitting a signed proposal, an applicant agrees that it fully understands the RFP and will abide by the terms and conditions contained in the RFP. No exceptions, amendments, or deviations will be allowed in any response unless agreed to in writing and prior to the date that responses are due. Unauthorized exceptions, amendments, or deviations in a response may result in disqualification of the proposal. To be considered, proposals must be received in the issuing office no later than 4:00 p.m. on January 27, 1998. Proposals may not be faxed, only originals will be accepted.

An applicant workshop for prospective applicants will be held on January 7, 1998, at 1:00 p.m. The meeting will be held in Room D-404, Texas Department of Health, Stratum Complex, 11044 Research Boulevard, Building D, fourth floor, Austin, Texas. No reservations are necessary.

Evaluation and Selection. Applications will be reviewed by an evaluation committee. The evaluation of the application will be based upon areas of consideration listed in the RFP.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716204
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 3, 1997

♦ ♦ ♦

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: City of Victoria Fire Department, Victoria, R18598, November 24, 1997; Fair Park Medical Clinic, Houston, R22003, November 24, 1997; Avenue C Chiropractic Clinic, Denton, R22153, November 24, 1997; Specific Chiropractic Clinic and Health, Abilene, R21539, November 24, 1997; Killeen Chiropractic, Killeen, R19873, November 24, 1997; Harold W. Clark, Burleson, R20863, November 24, 1997.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 5, 1997.

TRD-9716384
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 5, 1997

♦ ♦ ♦

Notice of Revocation of A Radioactive Material License

The Texas Department of Health (department), having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material license: The Port Acres Medical Clinic, Port Arthur, G01500, November 24, 1997.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 5, 1997.

TRD-9716383
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 5, 1997

♦ ♦ ♦

Texas Department of Housing and Community Affairs Manufactured Housing Division

Notice of Administrative Hearing

Monday, December 22, 1997, 9:00 a.m.

State Office of Administrative Hearing, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Casino Mobile Homes to hear alleged violations that the Respondent violated the Act, §7(j)(6) and the Rules, §§80.28(a), 80.123(a) and 80.203(b) by not properly submitting Monthly Installation Summary Reports showing the number of homes installed; not properly submitting Monthly Sales Summary Reports showing the number of homes sold; and not properly submitting Monthly Used Inventory Reports showing the number of homes which have been taken into inventory during the preceding months. SOAH 332-97-2227. Department MHD1997002359D, MHD1997002890S and MHD1997003499DS.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on December 10, 1997.

TRD-9716589
Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs Manufactured Housing Division
Filed: December 10, 1997

♦ ♦ ♦

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to use the assumed name of HERITAGE HEALTH PLANS, a domestic HMO. The home office is located in Tyler, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701

Issued in Austin, Texas, on December 10, 1997.

TRD-9716593
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 10, 1997

♦ ♦ ♦

Notice

Docket Number 2303, originally set on October 14, 1997 but postponed, is being reset for January 7, 1998, at 9:00 a.m. This matter which was submitted by the staff of the Texas Department of Insurance recommended approval of several items including: new forms for the Texas Automobile Rental Liability Policy and Texas Automobile Rental Liability Excess Policy; Proposed amendments to Rule 134, Leasing or Rental Concerns, in the Policy Rule Section VII of the Texas Automobile Rules and Rating Manual; proposed New Rule 141, Rental Car Companies, in the Policy Rule Section VII of the Manual; and proposed New Rule 141, Rental Car Companies on Section VII of the Rating Rules portion of the Manual.

This docket was previously published in the *Texas Register* on September 12, 1997, Exempt Filings (22 TexReg 9263).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716435
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 8, 1997

♦ ♦ ♦

Notice

On December 4, 1997, in Order Number 97-1219, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan Association, Plan of Operation.

For copies of Commissioner's order number 97-1219 and the Texas Automobile Insurance Association Plan of Operation, contact Angie Arizpe at (512) 463-6327 (refer to file number A-1197-35).

Issued in Austin, Texas, on December 5, 1997.

TRD-9716325
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 5, 1997

♦ ♦ ♦

Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be risk-assuming carriers under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

United Pacific Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716511
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 8, 1997

♦ ♦ ♦

Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket Number 2332 scheduled for January 29, 1998 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1998 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-1297-39-I) was filed on December 3, 1997.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1998 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance,

333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Reference Number A-1297-39-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Issued in Austin, Texas, on December 8, 1997.

TRD-9716595
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 10, 1997

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Nationwide Medical Review, Inc., a domestic third party administrator. The home office is Kirbyville, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on December 5, 1997.

TRD-9716324
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 5, 1997

♦ ♦ ♦

Third Party Administrators Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of CMS Insurance Administrator, Inc., a foreign third party administrator. The home office is Santa Rosa, California.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716512
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 8, 1997

♦ ♦ ♦

Commission on Jail Standards

Grant Amendment

Jail Standards, and titled Survey of Juvenile Detainees has been amended with supplemental grant funds to perform an additional task that was not included in the original grant application.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716569
Jack E. Crump
Executive Director
Commission on Jail Standards
Filed: December 9, 1997

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Notice of Applications for Waste Disposal/Discharge Permits

Applications for waste disposal/discharge permits issued during the period of December 1st through December 9, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application-new permit, amendment, or renewal and permit number.

AMERICAN NATIONAL CAN COMPANY, 1001 Fisher Road, Longview, Texas 75604; an aluminum can manufacturing plant; is located approximately 800 feet southwest of the intersection of U.S. Highway 80 and Fisher Road, in the City of Longview, Gregg County, Texas; new; Permit Number 03953.

CITY OF CHILLICOTHE, P.O. Box 546, Chillicothe, Texas 79225; the wastewater treatment plant is located northwest of the City of Chillicothe near the intersection of the Burlington Northern and Atchison Topeka and Santa Fe Railroads and approximately 1/4 mile west of the intersection of Farm-to-Market Road 924 and Farm-to-Market Road 2006 in the City of Chillicothe in Hardeman County, Texas; renewal; Permit Number 10639-001.

DENNY'S INC., 15815 Eastex Freeway, Humble, Texas 77338; the wastewater treatment plant is located at 15815 Eastex Freeway (U.S. Highway 59) and approximately 150 feet north of Bender Road in Harris County, Texas; renewal; Permit Number 11055-01.

CITY OF FRISCO, P.O. Drawer 1100, Frisco, Texas 75034; the Stewart Creek Wastewater Treatment Facilities are located immediately southwest of the Saint Louis-San Francisco Railroad crossing of Stewart Creek approximately 2,500 feet south of Farm-to-Market Road 720 in Collin County, Texas; amendment; Permit Number 10172-001.

GREEN TRAILS MUNICIPAL UTILITY DISTRICT, in care of Schwartz, Page & Harding, L.L.P., 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056; the wastewater treatment plant is on the north bank of Mason Creek, approximately two miles south of Interstate Highway 10, between Baker and Fry Roads in Harris County, Texas; renewal; Permit Number 12289-01.

CITY OF HAMLIN, P.O. Box 157, Hamlin, Texas 79520; the wastewater treatment plant is located approximately 1/4 mile southeast of the intersection of State Highway 92 and .S. Highway 83 on the north bank of California Creek in Jones County, Texas; renewal; Permit Number 10491-002.

CITY OF LITTLEFIELD, P.O. Box 1267, Littlefield, Texas 79339-1267; the wastewater treatment facility and disposal site are located on the north side of Farm-to-Market Road 54 and approximately 1.4 miles east of the intersection of U.S. Highway 385 and Farm-to-Market Road 54 in Lamb County, Texas; new; Permit Number 10207-002.

CITY OF ORANGE GROVE, P.O. Box 1350, Orange Grove, Texas 78372; the City of Orange Grove Wastewater Treatment Plant is located on the east side of County Road 351, approximately 0.5 mile south of the City of Orange Grove and approximately 0.9 mile south of the intersection of County Road 351 and Farm-to-Market Road 624 in Jim Wells County, Texas; renewal; Permit Number 10592-001.

CITY OF QUEEN CITY, P.O. Box 301, Queen City, Texas 75572; the wastewater treatment plant is located on the south side of Cypress Creek, approximately 1.1 miles east and 0.2 mile north of the intersection of Farm-to-Market Road 96 and U.S. Highway 59 in Cass County, Texas; renewal; Permit Number 11225-001.

SHELL OIL COMPANY, Deer Park Plant, P.O. Box 100, Deer Park, Texas 77536; a plant manufacturing petrochemicals; the plant site is located at 5900 Highway 225 in the City of Deer Park, Harris County, Texas; amendment with renewal; Permit Number 00402.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716541

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: December 9, 1997

♦ ♦ ♦

Notice of Application

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued during the period November 10, 1997 through November 25, 1997.

GARWOOD IRRIGATION COMPANY, P.O. Box 428, Garwood, Texas 77442; Application Number 14-5434B to amend Certificate of Adjudication Number 14-5434, as amended. Certificate of Adjudication Number 14-5434, as amended, includes authorization for Garwood Irrigation Company to divert and use not to exceed 168,000 acre-feet of water per annum at a maximum rate of 750 cfs from a point in Colorado County on the west bank of the Colorado River, Colorado River Basin for irrigation within the Company's service area in Colorado and Wharton Counties. The current service area includes land in the Colorado and Lavaca River Basins. The certificate indicates that not to exceed 35,000 acre-feet per annum out of the total of 168,000 acre-feet per annum is authorized for municipal and industrial purposes within the applicant's service area in Colorado and Wharton Counties. The priority date of Certificate No. 14-5434, as amended, is November 1, 1900. Pursuant to an agreement between Garwood Irrigation Company (Garwood) and the City of Corpus Christi (Corpus Christi), on January 30, 1997, Garwood divided the water rights authorized by Certificate Number 14-5434, as amended, into two separate and distinct portions: (1) Corpus Christi's Right and (2) Garwood's Remaining Right. Under "Corpus Christi's Right," Garwood is authorized to divert and use not to exceed 35,000 acre-feet of water per annum from the Colorado River for irrigation, municipal and industrial purposes at a maximum diversion rate of 150 cfs. Under "Garwood's Remaining Right," Garwood is authorized to divert and use not to exceed 133,000 acre-feet of water per annum from the Colorado River for irrigation at a maximum diversion rate of 600 cfs. The agreement also indicated that "Corpus Christi's Right" is subordinate in time priority to "Garwood's Remaining Right." Pursuant to the aforesaid agreement, Garwood is requesting that the Commission amend the "Corpus Christi's Right" portion of Certificate Number 14-5434, as amended, to the extent necessary, and that it grant such authorizations as may be necessary, pursuant to any provision of the Texas Water Code that may be applicable including, without limitation, Sections 11.122 and 11.085, so that the 35,000 acre-feet of water per annum authorized to be diverted from the Colorado River under "Corpus Christi's Right" is: (a) authorized to be used for municipal and industrial purposes; (b) authorized to be diverted anywhere on the west bank of the Colorado River within three different reaches referred to as Segments "A", "B" and "C"; and authorized to be diverted from the Colorado River Basin and transferred for use anywhere within the Lavaca, Guadalupe, San Antonio and Nueces River Basins and the Colorado-Lavaca, Lavaca-Guadalupe, San Antonio-Nueces, and Nueces-Rio Grande Coastal Basins. Garwood further requests that the Commission confirm that "Corpus Christi's Right", if so amended, would retain the November 1, 1900 priority date of Certificate Number 14-5434, but that it be subordinate in priority to "Garwood's Remaining Right" pursuant to the aforesaid agreement between the two parties. The Corpus Christi service area includes land in the San Antonio and Nueces River Basins and the San Antonio-Nueces and Nueces-Rio Grande Coastal Basins in Aransas, Atascosa, Bee, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, San Patricio and Willacy Counties.

NATIONAL GOLF OPERATING PARTNERSHIP, L.P., 2951 28th Street, Suite 3001, Santa Monica, California 90405-2961; Application Number 4152A to amend Water Use Permit Number 4036. Water Use Permit Number 4036 (Application Number 4152) authorizes the applicant to impound not to exceed 156 acre-feet of water in an existing SCS reservoir in Collin County, designated as Site Number 5A in the East Fork Watershed above Lavon, on an unnamed tributary of Wilson Creek, tributary of the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for recreational use only. The Soil Conservation Service (SCS) is now known as the Natural Resource Conservation Service. The permit also authorizes the applicant to maintain four other existing reservoirs on unnamed tributaries of Wilson Creek and impound therein 25 acre-feet, 20 acre-feet, 40 acre-feet and two acre-feet for in-place recreational use. These reservoirs are actually on an unnamed tributary of Comegy's

Creek, which is a tributary of Wilson Creek. The permit has a time priority of September 28, 1981. Permit Number 4036 includes a condition requiring the passing of all of the inflow through each reservoir when the water in downstream Lake Lavon falls below 492.0 mean sea level, the elevation of the top of the conservation pool. The applicant seeks to amend the permit to add the right to divert 321 acre-feet of water per year at a maximum rate of 2,400 gpm (5.35 cfs) from the perimeter of the SCS reservoir for irrigation of 118 acres of land, and to delete the aforesaid 2 acre-foot reservoir from the permit, as it has already been physically removed. The 118 acres to be irrigated are located within seven tracts totaling 160.854 acres and are known as Eldarado Country Club.

QUALITECH STEEL CORPORATION, 200 Marvin L. Berry Road, Corpus Christi, Texas 78409; Application Number 5602 to obtain a permit to divert not to exceed 161,300 acre-feet of saline water per year from a segment of the Corpus Christi Ship Channel (Inner Harbor) referred to as the Viola Channel, Corpus Christi Inner Harbor, Nueces-Rio Grande Coastal Basin, in Nueces County for industrial purposes. The water will be circulated through a non-contact once-through cooling system at the applicant's iron carbide production facility approximately five miles northwest of Corpus Christi, Texas and discharged to the Tule Lake Turning Basin, which is part of the Viola Channel. No water will be consumed in the use of the water at the plant and less than two percent of the water will be lost to evaporation after it is discharged at depth to the Tule Lake Turning Basin. The diversion point will be on land owned by Berry Group, Ltd., which the applicant is leasing.

WILLIAM GAVRANOVIC, JR., 5702 May Road, Wharton, Texas to divert and use not to exceed a total of 4,350 acre-feet of water per annum (3,500 acre-feet per annum from the Brazos River and 850 acre-feet per annum from the Old River, tributary of the Brazos River, Brazos River Basin) at a maximum combined rate of 4,000 gallons per minute (8.91 cubic feet per second), to irrigate a maximum of 1,000 acres of land located within two tracts totaling 1069.77 acres in Burleson County, approximately 12 miles south of College Station, Texas.

T C & E REALTY, INC., P.O. Box 666, Killeen, Texas 76540; Application Number 5089A to amend Permit Number 5089. Water Use Permit Number 5089 authorizes Connell Rent A Car to divert and use not to exceed 60 acre-feet of water per year from either bank of South Nolan Creek, tributary of Nolan Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin. Diverted water is authorized to be used to irrigate a maximum of 60 acres located within two tracts totaling 193.05 acres approximately ten miles west-northwest of Belton, Texas. The permit has a maximum diversion rate of 2.2 cfs (1000 gallons per minute), a time priority of August 19, 1986, and a December 31, 1997 expiration date. The applicant seeks to amend the permit by extending the time limitation another ten years.

T C & E REALTY, INC., P.O. Box 666, Killeen, Texas 76540; Application Number 5088A to amend Permit Number 5088. Water Use Permit No. 5088 authorizes T C & E Realty, Inc. to divert and use not to exceed 37 acre-feet of water per year from the north, or right, bank of South Nolan Creek, tributary of Nolan Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, to irrigate a maximum of 37.32 acres in Bell County, Texas. The permit has a maximum diversion rate of 2.2 cfs (1000 gallons per minute), a time priority of August 19, 1986, and a December 31, 1997 expiration date. The applicant seeks to amend the permit by extending the time limitation another ten years. If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716542
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 9, 1997

♦ ♦ ♦

Notice of Public Hearing

Notice of public hearing by the Texas Natural Resource Conservation Commission on proposed revisions to 30 TAC Chapter 115 and to the state implementation plan.

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 115 and to the SIP.

This proposal revises §115.10, concerning Definitions; adds a new §115.420, and revises §§115.421-115.423, 115.426, 115.427, and 115.429, concerning Surface Coating Processes, in response to requirements of the 1990 Amendments to the Federal Clean Air Act (FCAA). The revisions and new section establish emission limits for various coatings and cleaning operations at wood furniture manufacturing operations and shipbuilding/ship repair operations, restrict the use of conventional spray guns at wood furniture manufacturing operations to specific circumstances, and add definitions for terms used in these rules.

A public hearing on this proposal will be held in Austin on January 13, 1998, at 10:00 a.m. in Building F, Room 2210, at the commission complex, located at 12100 North IH-35, Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., January 20, 1998. For further information

on this proposal, please contact Mr. Eddie Mack, Air Policy and Regulations Division, at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 3, 1997.

TRD-9716210
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 3, 1997

♦ ♦ ♦

Provisionally-Issued Temporary Permits

Provisionally-Issued Temporary Permits to Appropriate State Water Listed below are permits issued during the period of December 9, 1997.

Application Number TA-7902 by Hunter Industries, Inc. for diversion of 1 acre-foot in a 6-month period for industrial (roadway construction) use. Water may be diverted from Mustang Creek, Brazos River Basin, approximately 24 miles southeast of Georgetown, Williamson County, Texas at the crossing of F.M. 619 and Mustang Creek.

Application Number TA-7904 by Robertson Onshore Drilling Co. for diversion of one acre-foot in a 6-month period for mining (oil well drilling) use. Water may be diverted from the Trinity River, Trinity River Basin, approximately 30 miles northwest of Athens, Henderson County, Texas and four miles west of State Highway 274.

Application Number TA-7906 by Hunter Industries, Inc. for diversion of one acre-foot in a 6-month period for industrial (roadway construction) use. Water may be diverted from Brushy Creek, Brazos River Basin, approximately 20 miles southeast of Georgetown, Williamson County, Texas at the crossing of F.M. 973 and Brushy Creek.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

Issued in Austin, Texas, on December 10, 1997.

TRD-9716616
Eugenia K. Brown, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 10, 1997

♦ ♦ ♦

Public Hearing Notice

Notice is hereby given that pursuant to the requirement of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning new Chapter 205, relating to general permits for Waste Discharges and amendments to Chapter 321, relating to control of certain activities by rule.

The new Chapter 205 will implement amended Texas Water Code, §26.040, which became law as an act of the 75th Texas Legislature (1997). The proposed rules also describe the procedures the commission will use to develop and issue general permits as well as the procedures to authorize discharges under the terms of any general permit. These permits may supersede some authorizations by rule currently utilized by the commission, and will offer an alternative to individual permits for eligible dischargers. Current authorizations-by-rule will remain in effect until expressly superseded by commission action.

Chapter 321, Subchapter I, is amended to reflect the new authority of the commission to authorize certain discharges by general permit, rather than through permit by rule. The amendments also revise the rule to add a reference to new 30 TAC Chapter 205 (relating to General Permits).

A public hearing will be held January 14, 1998, at 10:00 a.m. in Room 5108 of commission building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comment by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should refer to Rule Log Number 97151-205-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., January 23, 1998. For further information concerning this proposal, please contact Thomas W. Weber, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-4554.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible. Issued in Austin, Texas, on December 10, 1997.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716590
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 10, 1997

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 4, 1997, Kingsgate Telephone, Inc., d/b/a Greenleaf Telephone Company filed an application with the Public Utility Commission of Texas (PUC) to amend its certificate of operating authority (COA) granted in COA Certificate No. 50002. Applicant intends to expand its geographic area to include the exchanges of Cypress, Tomball, and Klein served by Southwestern Bell Telephone Company.

The Application: Application of Kingsgate Telephone, Inc., d/b/a Greenleaf Telephone Company for an amendment to its Certificate of Operating Authority, Docket Number 18197.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than December 29, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18197.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716503
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 1997

♦ ♦ ♦

Notice of Application

On December 5, 1997, MultiTechnology Services, L.P. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60097. Applicant intends to change ownership.

The Application: Application of MultiTechnology Services, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18437.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than December 29, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18437.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716559
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

Notice of Application for Approval of Certain Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 3, 1997, for approval of certain depreciation rates pursuant to §§52.002, 52.003, 52.252, and 53.056, of the Public Utility Regulatory Act, Texas Utility Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Southwest Texas Telephone Company for an Increase in Certain Depreciation Rates, Docket Number 18427 before the Public Utility Commission of Texas.

The Application: In Docket Number 18427, Southwest Texas Telephone Company requests approval to increase certain deprecation rates to receive full capital recovery of the following accounts: computers, digital electronic switching equipment, circuit equipment, buried cable-metallic, and radio systems.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before January 14, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716500
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 1997

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 1, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.102-54.111 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Cable Plus Company, L.P., doing business as Telephone Plus for a Service Provider Certificate of Operating Authority, Docket Number 18414 before the Public Utility Commission of Texas.

Applicant intends to provide enhanced telecommunications services utilizing advanced telecommunications switching platforms. Applicant intends to provide local dialtone, enhanced calling features, enhanced services, intraLATA, intrastate, interLATA, interstate and international long distance service.

Applicant's requested SPCOA geographic area includes the geographic regions currently served by the following local exchange companies: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company of Texas, Inc., Sugar Land Telephone Company, and Lufkin-Conroe Telephone Exchange, Inc. within the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than December 29, 1997.

Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716558
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

Notice of Application

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 8, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Buy-Tel Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 18446 before the Public Utility Commission of Texas.

Applicant intends to provide commercial, residential and metro telephone services with all Texas telephone service providers that have shared telecommunication capabilities.

Applicant's requested SPCOA geographic area includes the entire state of Texas within the territories of Sprint/United Telephone Company of Texas, Inc., Southwestern Bell Telephone Company, and GTE Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than December 29, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716562
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 1, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to § §54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of North American Telecommunications Corporation for a Service Provider Certificate of Operating Authority, Docket Number 18190 before the Public Utility Commission of Texas.

Applicant intends to resell the services of other licensed carriers, and will seek to enter both the residential and commercial markets providing basic switched local exchange service; private line local service, interexchange telecommunications services, and switched access and special access services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than December 29, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716499
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 1997

♦ ♦ ♦

Notice of Application To Amend Certificate of Convenience And Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 24, 1997, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, (PURA) 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at TEX. UTIL. CODE ANN. §§11.001 - 63.063). A summary of the application follows.

Docket Title and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Hays and Travis Counties, Docket Number 18389 before the Public Utility Commission of Texas.

The Application: In Docket Number 18389, Pedernales Electric Cooperative, Inc. requests an amendment to its certificate of convenience and necessity in order to construct approximately 9.03 miles of 138-kV transmission line to improve service reliability in Hays and Travis Counties.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 4, 1997.

TRD-9716286
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 1997

♦ ♦ ♦

Notice of Application

The staff of the Public Utility Commission of Texas (PUC) is preparing an application in conjunction with its new proposed rule, Substantive Rule §23.25 relating to Procedures Applicable to Chapter 58–Electing Incumbent Local Exchange Companies (ILECs). The application will facilitate new expedited procedures for electing ILECs to introduce a new service, or to modify the rates or tariff terms for an existing service. Pursuant to 16 Texas Administrative

Code §22.80, notice of the application is being published for the purpose of receiving public comment.

Along with a copy of this notice, the proposed application has been filed with the PUC. Persons wishing to review the application may obtain a copy from the PUC's Central Records Office, 1701 North Congress Avenue, Austin, Texas 78711-3326. Persons wishing to comment on the proposed form should submit five copies of written comments no later than 30 days after the date of publication of this notice. Written comments should clearly reference the application and Project Number 17472, apart from those comments addressing the rule, and should be sent to Commission Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716570
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for a 160 station addition to the existing PLEXAR-Custom service for Lubbock MHMR in Lubbock, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a 160 Station Addition to the Existing PLEXAR-Custom Service for Lubbock MHMR in Lubbock, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 18451.

The Application: Southwestern Bell Telephone Company is requesting approval for a 160 station addition to the existing PLEXAR-Custom service for Lubbock MHMR in Lubbock, Texas. The designated exchange for this service is the Lubbock exchange, and the geographic market for this specific PLEXAR-Custom service is the Lubbock LATA.

Persons who wish to comment upon the action sought should contact the Public tility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716571
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

Public Notice

On November 24, 1997, Kingsgate Telephone, Inc., filed an application for approval of an amendment to an existing interconnection agreement under §252 of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA), the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The application is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the amendment to the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Project Number 18388. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 30, 1997, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Project Number 18388.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716561
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

Public Notice of Interconnection Agreement

On December 5, 1997, Winstar Wireless of Texas, Inc., and GTE Southwest, Inc., collectively referred to as applicants, filed a joint

application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code)(FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 18442. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18442. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 6, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18442.

Issued in Austin, Texas, on December 9, 1997.

TRD-9716560
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 1997

♦ ♦ ♦

On December 4, 1997, United Telephone Company of Texas, Inc., d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint and MetroPhone, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (PURA). The joint application has been designated Docket Number 18433. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18433. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 5, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding

officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18433.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716502
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 1997

♦ ♦ ♦

Public Notice of Interconnection Agreements

On December 4, 1997, Kingsgate Telephone, Inc., d/b/a Greenleaf Telephone Company filed an application with the Public Utility Commission of Texas (PUC) to amend its certificate of operating authority (COA) granted in COA Certificate No. 50002. Applicant intends to expand its geographic area to include the exchanges of Cypress, Tomball, and Klein served by Southwestern Bell Telephone Company.

The Application: Application of Kingsgate Telephone, Inc., d/b/a Greenleaf Telephone Company for an amendment to its Certificate of Operating Authority, Docket Number 18197.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than December 29, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18197.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716501
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 1997

♦ ♦ ♦

Railroad Commission of Texas

Announcement

The Railroad Commission of Texas requests proposals for professional services from engineering firms with expertise in environmental assessments. Selection of the engineering firms will be in accordance with the Professional Services Procurement Act (Sections 2254.001 et seq. of Texas Government Code). The Commission shall have the sole authority to enter into any contracts.

Interested parties can receive a copy of the Request For Proposal that describes the format and scope of services by contacting John James Tintera, Deputy Assistant Director of Site Remediation and Special Response, at: Railroad Commission of Texas, Oil and Gas Division, 1701 North Congress, P.O. Box 12967, Austin, Texas 78711-2967, or by phone at 512-463-6765. All submittals must be received by the Commission at the above address by 5:00 p.m., January 22, 1998.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716475
Mary Ross McDonald
Deputy General Counsel/Office of General Counsel
Railroad Commission of Texas
Filed: December 8, 1997

♦ ♦ ♦

The Texas A&M University System

Consultant Contract Award Notification

In compliance with the provisions of Texas Civil Statutes, Article 6265-11c, Texas A&M International University furnishes this notice of consultant contract award. After solicitation of proposals in the June 3, 1997, issue of the *Texas Register* (22 TexReg 4925), one proposal was approved for funding.

The contract was awarded for the development and implementation of a comprehensive job evaluation and compensation plan for Texas A&M International University. The contract was awarded to Arthur Andersen LLP, 711 Louisiana Street, Suite 1300, Houston, TX 77002-2786, for $46,403 including expenses.

The beginning date for this project is November 24, 1997, and the approximate ending date is March 1, 1998. The final report and management letter are due to be completed by March 1, 1998.

For further information, please call (956) 326-2365.

Issued in College Station, Texas, on December 5, 1997.

TRD-9716374
Vickie Burt
Executive Secretary to the Board
The Texas A&M University System
Filed: December 5, 1997

♦ ♦ ♦

Texas Department of Transportation

Notice of Invitation

Notice of Invitation: The San Angelo District of the Texas Department of Transportation (TxDOT) intends to enter into one contract with a professional engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 42 TAC §;9.30-9.43, to provide the following services. To be considered, a prime provider and any subproviders proposed on the team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work categories unless the work category is a non-listed work category. To qualify for contract award, a selected prime engineer must perform a minimum of 30% of the actual contract work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees, needs to be aware of the revolving door laws, including Government Code, Chapter 572 and Section 52, Article IX, of the General Appropriations Bill. To be considered, the proposed team

must demonstrate that they have a professional engineer, architect, landscape architect, or surveyor registered in Texas who will sign and/or seal the work to be performed on the contract.

Contract Number: 07-845P5002, The precertified work categories and the percent of work per category are as follows: 3.1.1 Route Studies and Schematic Design (Minor Roadways) (10%); 3.5.1 Major Bridge Layouts (5.0%); 4.1.1 Minor Roadway Design (55%); 8.1.1 Signing, Pavement Marking and Channelization (5.0%); 10.2.1 Basic Hydraulic Design (15%); 14.3.1 Transportation Foundation Studies (1%); 15.1.1 Survey (1.0%); 15.1.2 Parcel Maps (1.0%); 15.1.3 Legal Descriptions (1.0%); 15.1.4 Right of Way Maps (1.0%); 15.2.1 Survey (5%). The work performed shall consist of development of the schematic and plans, specifications and estimates for the reconstruction and widening of two sections of SH 158 to a four-lane undivided roadway.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation in the work to be performed under this contract is zero percent of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers:

1. Past Performance: Minimum - The prime provider's project manager must have one favorable reference from other entities on similar type of work (two favorable references preferred).

2. Project Requirements of Team

Route Studies and Schematic Design - Minor Roadways (3.1.1): Minimum - Three years experience (four years preferred).

Major Bridge Layouts (3.5.1): Minimum - Three years experience (four years preferred).

Minor Roadway Design (4.1.1): Minimum - Three years experience (four years preferred).

Signing, Pavement Marking and Channelization (8.1.1): Minimum - Two years experience (three years preferred).

Basic Hydraulic Design (10.2.1): Minimum - Four years experience (five years preferred).

Transportation Foundation Studies (14.3.1): Minimum - Two years experience (three years preferred).

Survey (15.1.1): Minimum - Three years experience (four years preferred).

Parcel Maps (15.1.2): Minimum - Three years experience (four years preferred).

Legal Descriptions (15.1.3): Minimum - Three years experience (four years preferred).

Right of Way Maps (15.1.4): Minimum - Three years experience (four years preferred).

Design Survey (15.2.1): Minimum - Three years experience (four years preferred).

3. Special (Similar) Project Related Experience of the Project Manager and Team Members

Route Studies and Schematic Design - Minor Roadways (3.1.1): Minimum - Assigned team member has developed two schematics for construction projects (three projects preferred).

Major Bridge Layouts (3.5.1): Minimum - Assigned team member has developed two bridge layouts for construction projects (three projects preferred).

Minor Roadway Design (4.1.1): Minimum - Assigned team member has developed PS&E for two rural multi-lane highway projects (three projects preferred).

Signing, Pavement Marking and Channelization (8.1.1): Minimum - Assigned team member has developed Signing, Pavement Marking and Channelization summaries/details for two rural multilane highway projects (three projects preferred).

Basic Hydraulic Design (10.2.1): Minimum - Assigned team member has developed the hydraulic design for two rural highway projects (three projects preferred).

Transportation Foundation Studies (14.3.1): Minimum - Assigned team member has performed foundation studies for bridge/retaining walls on two highway projects (three projects preferred).

Survey (15.1.1): Minimum - Assigned team member demonstrates three years experience on highway projects (four years preferred).

Parcel Maps (15.1.2): Minimum - Assigned team member demonstrates three years experience on highway projects (four years preferred).

Legal Descriptions (15.1.3): Minimum - Assigned team member demonstrates three years experience on highway projects (four years preferred).

Right of Way Maps (15.1.4): Minimum - Assigned team member demonstrates three years experience on highway projects (four years preferred).

Design Survey (15.2.1): Minimum - Assigned team member demonstrates three years experience on highway projects (four years preferred).

Project Manager: Minimum - Registered Professional Engineer with experience as key team member on two rural highway projects (three projects preferred).

Note: Designated key team members (Engineers and Technicians) may perform in more than one capacity within the team.

4. Evidence of Compliance with HUB Goal - Not applicable.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (915) 947-9244, or by hand delivery or mail to TxDOT, San Angelo District, Attention: Matt C. Carr, P.E., 4502 Knickerbocker Road, San Angelo, Texas, 76904. Letters of interest will be received until 5:00 p.m., January 16, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to three 8 1/2 x 11 pages (10 or 12 point font size, single sided with no attachments or appendices), and must include contract number 07-845P5002; an organizational chart containing names, addresses, telephone number and fax number of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; a list of the prime provider's project manager and key personnel proposed for the contract; team, capabilities; special project related experience; project related experience performed since precertification; and other pertinent information addressed in the notice including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Matt C. Carr, P.E. at (915) 947-9233 or fax (915) 947-9244.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716581
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 10, 1997

♦ ♦ ♦

Rate Schedule

Public Notice: The Texas Department of Transportation is authorized by Texas Civil Statutes, Article 6144e to publish literature for the purpose of advertising the highways of this state and encouraging travel in Texas, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 describes the policies governing advertising in department travel literature, lists acceptable and unacceptable subjects for advertising in department travel literature, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A), the department invites any individual or entity interested in advertising in department travel literature to request to be added to the department's mailing list. Written requests may be made through the department's contracted agent by writing to Recognition Communications, Inc., 9794 Forest Lane, Suite 634, Dallas, Texas 75243. Requests may also be made by telephone to 1-800-969-9896 or faxed to 1-800-839(TEX)-7344.

The department is now accepting advertising for the 1999 edition of the Texas State Travel Guide, scheduled to be printed and available in February 1999. All individuals and entities on the mailing list will be contacted by mail on January 20, 1998, and will have an opportunity to request a media kit containing rate card information, publisher's editorial profile, order form, and a sample of the Texas State Travel Guide. The department will also contact all individuals and entities added to the mailing list until the deadline for accepting advertising space. On and after February 20, 1998, the department will accept all insertion orders (orders for paid advertising) received prior to the publication deadline, on a first-come, first-served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 20, 1998, will not be accepted. All insertion orders will be stamped with the date they are received.

Orders for premium space will only be accepted by mail postmarked on or after February 20, 1998. Advertisers must indicate ranked preference on all premium positions desired. If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on March 9, 1998. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The publication deadline for accepting advertising space is November 10, 1998. The deadline for accepting materials is December 3, 1998.

The Texas State Travel Guide is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4 color photography. The guide also includes sections listing Texas lakes, state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request travel planning information for Texas.

The rate card information for the Texas State Travel Guide is included in this publication as Figure 1, 43 TAC §23.10.

graphic

Issued in Austin, Texas, on December 10, 1997.

TRD-9716580
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 10, 1997

♦ ♦ ♦

Texas Workers Compensation Commission

Corrections of Error

The Texas Workers Compensation Commission proposed amendments 28 TAC §§164.1–164.8, 164.10–164.12, and 164.14–164.17. The rules appeared in the November 28, 1997, issue of the *Texas Register*, (22 TexReg 11638).

The proposed amendments contained errors as submitted.

In the preamble on page 11640, left column, first full paragraph, tenth line, the term Extra-Hazardous Employer rather than Extra-Hazardous Employers should be used.

In the preamble on page 11640, left column, first full paragraph, twelfth line, the words “in conflict” should be inserted between the words “plan” and “with”.

In the preamble on page 11640, right column, the last sentence of the first (partial) paragraph:

The last sentence of this paragraph which reads, “This change clarifies how fatalities resulting from circumstances beyond the control of jurisdiction of the employer would be counted in the identification,” is misplaced. This sentence should be the second to the last sentence rather than the last sentence of the paragraph.

In the preamble on page 11640, right column, third full paragraph (labeled “New §164.17”), fourth line, the word “Employer” should be inserted between the words “Hazardous” and “Program”.

In the preamble on page 11640, right column, third full paragraph (labeled "New §164.17"), fourteenth line, the word "rate" should be inserted between the words "injury" and "is".

In the preamble on page 11641, left column, first paragraph (partial), first line, the word "a" should be inserted between the words "seen" and "reduction".

On page 11642, right column, in the rule title of §164.7, the words "Public Employers" should be underlined to denote added language.

On page 11643, right column, in the rule text of §164.14(e)(4), second line, the first letter of the word "employer" should be capitalized.

On page 11644, left column, in the rule text of §164.16(d)(2), first and second lines, the words "identified operational and safety hazards and injury" should be deleted.

On page 11644, right column, in the rule text of §164.16(d)(7), third line, the word "with" between the words "measures" and "when" should be deleted.

On page 11644, right column, in the rule text of §164.16(d)(7), seventh line, the word "or" should be "of".

On page 11644, right column, in the rule text of §164.16(f), first line, the reference to subsection (a) should be subsection (e).

On page 11644, right column, in the rule text of §164.17(b), first line, the word "a" at the end of the line should be "or".

On page 11644, right column, in the rule text of §164.17(c), first and second line, the words "at a" should be deleted.

The Texas Workers Compensation Commission adopted amendments 28 TAC §126.5 and §126.6. The rules appeared in the November 28, 1997, issue of the *Texas Register*, (22 TexReg 11693).

The amendments contained an error as submitted.

On page 11698, left column, §126.6(a), the second to the last sentence. The reference in this sentence to subsection (g) is incorrect and should be reference to subsection (h).

♦ ♦ ♦

Invitation To Applicants For Appointment To The Medical Advisory Committee

The Texas Workers' Compensation Commission (TWCC) invites all qualified individuals, and representatives of public health care facilities and other entities to apply to fill any of the following positions on the Medical Advisory Committee (MAC) in accordance with the eligibility requirements of the new Standards and Procedures for the Medical Advisory Committee. The purpose and tasks of the MAC are outlined in the Texas Labor Code, §413.005, which includes advising the Medical Review Division of TWCC on the development and administration of medical policies and guidelines. The MAC meets, on the average, once every six weeks. MAC members are not reimbursed for travel, per diem, or other expenses associated with the MAC activities and meetings.

The members of the MAC are appointed by the six commissioners of TWCC and include health care providers, representatives of employees and employers and members of the general public. Each member must be knowledgeable and qualified regarding work-related injuries and diseases. The complete membership of the MAC includes 16 primary members and 16 alternate members.

During the primary member's absence, the alternate member will attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed. The alternate may attend all meetings. Alternate members shall fulfill the same responsibilities as primary members, as set out in the Standards and Procedures for the Medical Advisory Committee as adopted by the Commission.

The Commission solicits applications for the following positions on the TWCC Medical Advisory Committee:

PRIMARY

1. Primary member - Public Health Care Facility
2. Primary member - Representative of Employees

ALTERNATE

3. Alternate member - Public Health Care Facility
4. Alternate member - Dentist
5. Alternate member - Podiatrist
6. Alternate member - Occupational Therapist
7. Alternate member - Medical Equipment Supplier
8. Alternate member - Representative of Employees
9. Alternate member - General Public

Any person or entity interested in serving on the MAC may contact Juanita Salinas in the Commission's Medical Review Division at (512) 707-5888 to obtain an application packet. .

Issued in Austin, Texas, on December 4, 1997.

TRD-9716237
A. Kaylene Ray
Assistant General Counsel
Texas Workers' Compensation Commission
Filed: December 4, 1997

♦ ♦ ♦

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette ❑ 5 1/4" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials, State	(512) 463-6334
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

❒ **Change of Address**

❒ **Back Issue**
_____ Quantity
Volume _____,
Issue # _____
(Prepayment required for back issues)

❒ **New Subscription (Yearly)**

Printed ❒ $95

Diskette
❒ 1 to 10 users $200
❒ 11 to 50 users $500
❒ 51 to 100 users $750
❒ 100 to 150 users $1000
❒ 151 to 200 users $1250
More than 200 users--please call

Online BBS
❒ 1 user $35
❒ 2 to 10 users $50
❒ 11 to 50 users $90
❒ 51 to 150 users $150
❒ 151 to 300 $200
More than 300 users--please call

NAME _____

ORGANIZATION_____

ADDRESS _____

CITY, STATE, ZIP _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

❒ **Bill Me** ❒ **Payment Enclosed**

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additonal entry offices
_____
_____